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Vol. 48 No. 89
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Testis Federal Register

Friday
May 6, 1983

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Farm Credit Administration

Biologics

Food and Drug Administration

Chlorinated Naphthalenes

Environmental Protection Agency

Fisheries

National Oceanic and Atmospheric Administration

Flood Insurance

Federal Emergency Management Agency

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Marketing Agreements

Agricultural Marketing Service

Milk Marketing Orders

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Wage rates; procedures for predetermination; correction

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Federal Register

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegation of Authority

Correction

In FR Doc. 83-11587 beginning on page 19697, in the issue of Monday, May 2, 1983 the following correction should be made in the second column.

The "EFFECTIVE DATE" should read "May 2, 1983."

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 83-320]

Cut Flowers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of Interim Rule; Correction.

SUMMARY: This document corrects an affirmation of interim rule which was published in the Federal Register on April 20, 1983 (48 FR 16875-16877). The previous document amended the cut flower regulations to require certain cut flowers found upon inspection at the port of entry to be infested with agromyzids (insects of the family Agromyzidae) to be fumigated with methyl bromide. On page 16877, in the

second paragraph the phrase "1000 cu. ft." should be corrected to read "per 1000 cu. ft.". The omission of the word "per" in the Federal Register document of April 20, 1983 was an editorial error.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5533.

Murray T. Pender,

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

[FR Doc. 83-12232 Filed 5-5-83; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 244]

Food Stamp Program: Joint Food Stamp/Public Assistance Case Processing

Correction

In FR Doc. 83-8294, beginning on page 13955, in the issue of Friday, April 1, 1983, on page 13957 in the second column, in the third paragraph, in the seventh line "will not drop" should read "will drop".

BILLING CODE 1505-01-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 correction.

On page 9231, second column, first line of § 729.301 (c)(5) "Net weight" should have read "Quantity".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 410]

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 8-14, 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 8, 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 8, 1982. The committee met again publicly on May 3, 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 910.710 is added as follows:

§ 910.710 Lemon regulation 410.

The quantity of lemons grown in California and Arizona which may be handled during the period May 8, 1983, through May 14, 1983, is established at 300,000 cartons.

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

Dated: May 5, 1983.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable
Division, Agricultural Marketing Service.

[FR Doc. 83-12390 Filed 5-5-83; 1:50 pm]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

[Amdt. to REA Bulletin 20-14]

Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends Appendix A—REA Bulletins by revising Bulletin 20-14, Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act. Currently, in order to meet program needs more effectively and conserve available loan funds, REA requires qualified borrowers to obtain a portion of their long-term loans from a supplemental lender, on terms and conditions approved by REA, as a prerequisite for obtaining REA loans. The final rule generally requires both REA and supplemental loans to have the same terms with regard to final maturity and methods of computation of interest and principal payments, such terms to be agreed upon by the borrower, REA and the supplemental lender. REA insured long-term loans will be available along with appropriate supplemental loans for periods of 20, 25, 30 and 35 years. In addition, REA will reduce the deferment period for repayment of principal from the present 3 years to 2 years for an REA loan. A 2-year deferment period is consistent with the majority of REA loans in that the facilities financed result from a 2-year construction work plan. Except for a small proportion of instances, the facilities will be in service and producing revenues within 2 years. No requirement will be imposed regarding deferment periods for supplemental lenders.

REA has been advised that there is interest among REA borrowers and supplemental lenders in reducing the length of the supplemental loans and in having levelized principal payments.

EFFECTIVE DATE: Loan applications received on or after June 1, 1983.

ADDRESS: Submit written comments to the Director, Electric Borrowers' Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Weaver, Director, Electric Borrowers' Management Division, at the above address, telephone number (202) 382-1900. The

Final Impact Analysis describing the options considered in developing and implementing this final rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*) (Act), REA hereby amends REA bulletin 20-14, Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act. This final action has been reviewed in conformance with Executive Order 12291, Federal Regulation. It will not (1) have an annual effect on the economy of \$100 million or more; (2) result in major increases 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 "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.

Background

In general, REA loans made concurrently with supplemental lenders have a 35-year amortization period which is the maximum permitted by the Act. Currently, REA Bulletin 20-14 does not require concurrent loans made by supplemental lenders to have the same maturity date and repayment schedule as the REA loan. REA has been advised that there is interest among REA borrowers and supplemental lenders in reducing the length of the supplemental loans and in having levelized principal payments. A widespread change in the terms of the supplemental loans without a change by REA would have a significant impact on the REA loan program. Without a change in the current REA practice, there would be an increase in demand for REA loans in order to meet the capital needs of borrowers making shorter term repayments to supplemental lenders.

REA considered various options including retaining the current practice which would permit supplemental loans with a 20- to 35-year payback period and levelized principal plus interest or levelized principal and interest payments along with the standard 35-year levelized principal and interest REA loan.

This option could result in borrowers needing to raise from REA, the

supplemental lenders or through retail rates, additional funds to cover increased debt service requirements if borrowers selected shorter term supplemental loans. This would have a corresponding effect on the REA loan program as borrowers financed a larger percentage of their capital needs with REA funds and paid off their supplemental debt earlier.

Another option considered by REA would be to require coterminous loan amortization periods which would significantly lessen the impact on the REA Revolving Fund. However, if borrowers were not also required to use the same repayment method, i.e., leveled principal plus interest or level payments including both principal and interest to both REA and the supplemental lender, REA's proportionate outstanding indebtedness would tend to increase. REA borrowers would make level principal payments to supplemental lenders and continue to pay leveled principal and interest to REA, thus putting increased burdens on the Revolving Fund.

REA has decided to amend Bulletin 20-14 in a manner which will include (1) equitable and flexible loan terms and conditions, (2) permit borrowers to evaluate and choose loan maturity dates and repayment schedules to fit their needs, and (3) maintain the resources of the Revolving Fund.

Public Comment

A notice of Proposed Rulemaking was published in the *Federal Register* on January 14, 1983, Volume 48, Number 10, page 1731. Ten letters were received with comments on the proposed action. One letter from the National Rural Utilities Cooperative Finance Corporation (CFC), a supplemental lender, was favorable to the proposal. Another letter from the Rural Utility Lending Task Force, a group representing the Farm Credit Banks for Cooperatives, indicated that it expressed no opposition nor did it endorse the proposal. The task force pointed out that because REA loans have a fixed interest rate and the Banks offer variable interest rates subject to change during the life of the loan, precise matching of repayment terms between REA and supplemental lenders would be difficult to achieve. This policy change will certainly permit variable interest rates in loans offered by supplemental lenders. REA expects that in accordance with appropriate loan agreements, as interest rates change, supplemental lenders may recalculate the amounts of the installments either for level principal loans or level payment (principal and interest) loans,

to adjust for the interest component so long as the common maturity date and agreed schedule of principal payments are maintained. The Banks for Cooperatives task force also indicated that it strongly supported all measures designed to preserve the assets and the integrity of REA's Revolving Fund and suggested closer working relationships, flexibility and coordination between REA and the Banks for Cooperatives.

Another respondent expressed concern on the effect of the new rule on certain borrowers which are public bodies with statutory limits on the length of long-term supplemental financing arrangements. The rule, however, would not impair the REA Administrator's discretion to deal with these types of situations on a case-by-case basis.

Seven letters were received from borrowers which opposed the reduction of principal deferment for REA loans from the former 3 years to 2 years under this rule. It was noted that it could take a full 3 years to complete scheduled construction and receive revenue from the facilities constructed, and that in these cases, making principal payments after only 2 years could cause hardships. However, REA policy is to provide financing for the 2-year distribution construction needs of all borrowers to assure equitable distribution of available loan funds. Except for a small proportion of instances, the facilities financed will be in service and producing revenues within 2 years. In addition, the amortization of principal over a 33-year period rather than a 32-year period would make principal payments begin 1 year earlier but regular annual payments would in fact be slightly less.

These borrowers also expressed their preference to retain the present policy which permits borrowers to repay supplemental loans with higher interest rates over a shorter period. However, if a large number of borrowers did so, it would place increased burdens on the REA Revolving Fund as discussed above. The possibility of this increased burden on REA's limited resources is a major reason for the implementation of this new loan policy.

The policy set forth above supersedes all previous policies and requirements regarding deferments, loan maturity dates and amortization schedules including but not limited to those set forth in REA Bulletin 20-2, *Electric Loan Policies and Application Procedures*, paragraph VIII B, and applicable sections of Bulletin 20-9, *Loan Payment and Statements*.

List of Subjects in 7 CFR Part 1701

Electric utilities, Loan programs—energy.

Dated: April 13, 1983.

Harold V. Hunter,
Administrator.

[FR Doc. 83-11904 Filed 5-5-83; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 82N-0217]

Additional Standards for Diagnostic Substances for Laboratory Tests; Antibody to Hepatitis B Surface Antigen and Hepatitis B Surface Antigen; Samples, Protocols, and Official Release

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologic regulations to moderate the requirements concerning submission of samples and official release of nonradiolabeled Antibody to Hepatitis B Surface Antigen (Anti-HBsAg) and Hepatitis B Surface Antigen (HBsAg). This rule will eliminate requirements that are not essential for the protection of public health.

EFFECTIVE DATE: June 6, 1983.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton, National Center for Drugs and Biologics (HFN-813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of July 14, 1981 (46 FR 36134), FDA amended Part 660 by adding new § 660.6 (21 CFR 660.6) to reduce the number of samples of diagnostic test kits containing Anti-HBsAg iodinated with ¹²⁵I that must be submitted to the National Center for Drugs and Biologics for testing and lot release before issuance of the test kits by the manufacturer. Manufacturers had been required to submit a sample and protocol for each lot of the diagnostic test kit marketed. The new § 660.6(b) requires manufacturers of Anti-HBsAg iodinated with ¹²⁵I to submit one finished package of each lot until written notification of official release by the agency is received for each of at least five consecutive lots. Thereafter, sample submission is required only at

90-day intervals, and written notification of official release is not applicable. The new § 660.6(b) eliminates unnecessary burdens on manufacturers concerning the loss of product and cost of mailing samples, and on the agency in the cost of storing, testing, and disposing of sample diagnostic test kits.

Since the new § 660.6 was promulgated, FDA has received a request from a manufacturer to extend the provisions of § 660.6(b) concerning the reduction in the number of samples to be submitted to both § 660.6(a) concerning Anti-HBsAg not iodinated with ¹²⁵I and § 660.46 (21 CFR 660.46) concerning HBsAg. Both §§ 660.6(a) and 660.46 now prohibit these final products from being issued by the manufacturer until samples of each lot of product have been submitted to FDA for testing and FDA provides written notification of official release to the manufacturer. A sample of each lot of antibody to Anti-HBsAg not iodinated with ¹²⁵I and HBsAg has been tested and release of each lot has been provided by FDA since 1971 and 1975, respectively, to ensure the continued quality and reliability of the finished test kits.

FDA's data concerning the testing of samples of both of these products demonstrate consistency in the potency, quality, and reliability of the products. Therefore, FDA believes that the present sample testing requirements of §§ 660.6(a) and 660.46 are unnecessary and that the less stringent provisions of § 660.6(b) should be extended as requested. Accordingly, in the Federal Register of August 17, 1982 (47 FR 35780), FDA proposed to amend §§ 660.6 and 660.46 to reduce the required quantity of sample to be submitted to the agency and to eliminate the requirement of official release of nonradiolabeled Anti-HBsAg and HBsAg (including nonradiolabeled and radiolabeled products and unlyophilized HBsAg-coated red blood cells) after consistency in manufacturing has been established following licensure. For clarity, FDA proposed to eliminate the distinction in each section between the different forms of the affected products.

In addition, FDA believes that the regulations should provide the agency the flexibility to require fewer samples than that prescribed by the current regulations, or no samples, when FDA determines that as a result of testing efficiency or technological changes, fewer or no samples are sufficient to ensure the potency, quality, and reliability of the finished product. Therefore, FDA proposed amendments to authorize the Director, Office of

Biologics, National Center for Drugs and Biologics, to request a smaller quantity of sample of these products than specified now in the regulations or no samples.

Interested persons were given until October 18, 1982, to submit comments on the August 17, 1982 proposal. In response, two comments were received. Both comments supported the proposed changes; however, one recommended two revisions. A summary of the comments and FDA's responses follows. In addition, FDA made editorial revisions in the final rule that are intended to clarify the regulations.

1. One comment on proposed §§ 660.6(a)(1) and 660.46(a)(1) (redesignated as §§ 660.6(a)(2) and 660.46(a)(2) in the final rule) concerned the submission of samples to FDA within 1 working day after the manufacturer has completed all tests on the samples. The comment stated that preparation for submission of samples may require more than 1 working day and suggested that the regulation be changed to allow at least 5 working days to submit samples.

FDA agrees with the comment. FDA acknowledges that the proposed time limit of 1 working day to submit samples and protocols to FDA may create a burden on manufacturers for the preparation of the samples and protocols for submission. However, a certain time limit is necessary to ensure that a sample of a product is stable and potent when it arrives at FDA for testing to enable FDA to compare properly its results of tests on the sample with a manufacturer's test results. FDA believes that the suggested time limit of 5 working days will not be burdensome on manufacturers and will ensure that a sample will possess an acceptable stability and potency when it arrives for testing at the Office of Biologics. FDA notes that the dating period for iodinated products is 45 days from the day of labeling the product with the radionuclide. Therefore, for iodinated products with a dating period of only 45 days that must receive official release from FDA before distribution, it is to the manufacturer's advantage that samples and protocols be submitted to FDA as soon as possible following satisfactory completion of all tests.

2. One comment on proposed §§ 660.6(a)(1)(ii) and 660.46(a)(1)(ii) (redesignated as §§ 660.6(a)(2)(ii) and 660.46(a)(2)(ii) in the final rule) concerned the identification of submitted surveillance samples. The comment recommended that the container label not be required to include the date of manufacture and the

words "surveillance sample" because the container label may be too small to accommodate that additional information. The comment noted that the date of manufacture and the words "surveillance test results" will appear on the protocol accompanying the samples, as required under §§ 660.6(b) and 660.46(b).

FDA disagrees with the comment. The proposed regulation requires only that the sample be identified as a "surveillance sample" and include the date of manufacture. FDA did not intend to require that such identification be on the container label. Identification of the sample could be accomplished by various methods, such as using a supplemental label or identifying the package or test kit with an ink pad stamp using indelible ink. FDA is requiring that both the surveillance sample and the protocol for the sample be identified because a sample and protocol may be received and reviewed independently at the Office of Biologics.

Accordingly, FDA is amending the additional standards for nonradiolabeled Anti-HBsAg and HBsAg to permit FDA to reduce the number and size of the samples to be submitted to obtain official release of the products when such requirements are not necessary to protect public health. The final rule is different from the proposal in that samples and protocols are to be submitted to FDA within 5 days after the manufacturer completes all testing of the products, instead of within 1 day, and minor clarifying changes were made.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (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.

The agency has reexamined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The regulation will reduce the burden on industry under the current regulations by reducing the quantity of product samples required to be submitted and/or the requirements for official release by FDA of each manufactured lot of product. There are currently only three manufacturers of HBsAg and nine manufacturers of Anti-HBsAg products. Therefore, the agency

concludes that the final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 660

Biologics, Labeling.

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 660 is amended as follows:

1. By revising § 660.6, to read as follows:

§ 660.6 Samples; protocols; official release.

(a) *Samples.* (1) For the purposes of this section, a sample of product not iodinated with ¹²⁵I means a sample from each filling of each lot packaged as for distribution, including all ancillary reagents and materials; and a sample of product iodinated with ¹²⁵I means a sample from each lot of diagnostic test kits in a finished package, including all ancillary reagents and materials.

(2) Unless the Director, Office of Biologics, determines that the reliability and consistency of the finished product can be assured with a smaller quantity of sample or no sample and specifically reduces or eliminates the required quantity of sample, each manufacturer shall submit the following samples to the Director, Office of Biologics (HFN-800), 8800 Rockville Pike, Bethesda, MD 20205, within 5 working days after the manufacturer has satisfactorily completed all tests on the samples:

(i) One sample until written notification of official release is no longer required under paragraph (c)(2) of this section.

(ii) One sample at periodic intervals of 90 days, beginning after written notification of official release is no longer required under paragraph (c)(2) of this section. The sample submitted at the 90-day interval shall be from the first lot or filling, as applicable, released by manufacturer, under the requirements of § 610.1 of this chapter, after the end of the previous 90-day interval. The sample shall be identified as "surveillance sample" and shall include the date of manufacture.

(iii) Samples may at any time be required to be submitted to the Director, Office of Biologics, if the Director finds that continued evaluation is necessary

to ensure the potency, quality, and reliability of the product.

(b) *Protocols.* For each sample submitted as required in paragraph (a)(1) of this section, the manufacturer shall send a protocol that consists of a summary of the history of manufacture of the product, including all results of each test for which test results are requested by the Director, Office of Biologics. The protocols submitted with the samples at periodic intervals as provided in paragraph (a)(2)(ii) of this section shall be identified by the manufacturer as "surveillance test results."

(c) *Official release.* (1) The manufacturer shall not distribute the product until written notification of official release is received from the Director, Office of Biologics, except as provided in paragraph (c)(2) of this section. Official release is required for samples from at least five consecutive lots or fillings, as applicable, manufactured after licensure of the product.

(2) After written notification of official release is received from the Director, Office of Biologics, for at least five consecutive lots or fillings, as applicable, manufactured after licensure of the product, and after the manufacturer receives from the Director, Office of Biologics, written notification that official release is no longer required, subsequent lots or fillings may be released by the manufacturer under the requirements of § 610.1 of this chapter.

(3) The manufacturer shall not distribute lots or fillings, as applicable, of products that required sample submission under paragraph (a)(2)(iii) of this section until written notification of official release or notification that official release is no longer required is received from the Director, Office of Biologics.

2. By revising § 660.46, to read as follows:

§ 660.46 Samples; protocols; official release.

(a) *Samples.* (1) For the purposes of this section, a sample of product not iodinated with ¹²⁵I means a sample from each filling of each lot packaged as for distribution, including all ancillary reagents and materials; and a sample of product iodinated with ¹²⁵I or unlyophilized HBsAg-coated red blood cells means a sample from each lot of diagnostic test kits in a finished package, including all ancillary reagents and materials.

(2) Unless the Director, Office of Biologics, determines that the reliability and consistency of the finished product

can be assured with a smaller quantity of sample or no sample and specifically reduces or eliminates the required quantity of sample, each manufacturer shall submit the following samples to the Director, Office of Biologics (HFN-800), 8800 Rockville Pike, Bethesda, MD 20205, within 5 working days after the manufacturer has satisfactorily completed all tests on the samples:

(i) One sample until written notification of official release is no longer required under paragraph (c)(2) of this section.

(ii) One sample of product at periodic intervals of 90 days, beginning after written notification of official release is no longer required under paragraph (c)(2) of this section. The sample submitted at the 90-day interval shall be from the first lot or filling, as applicable, released by the manufacturer, under the requirements of § 610.1 of this chapter, after the end of the previous 90-day interval. The sample shall be identified as "surveillance sample" and shall include the date of manufacture.

(iii) Samples may at any time be required to be submitted to the Director, Office of Biologics, if the Director finds that continued evaluation is necessary to ensure the potency, quality, and reliability of the product.

(b) *Protocols.* For each sample submitted as required in paragraph (a)(1) of this section, the manufacturer shall send a protocol that consists of a summary of the history of manufacture of the product, including all results of each test for which test results are requested by the Director, Office of Biologics. The protocols submitted with the samples at periodic intervals as provided in paragraph (a)(2)(ii) of this section shall be identified by the manufacturer as "surveillance test results."

(c) *Official release.* (1) The manufacturer shall not distribute the product until written notification of official release is received from the Director, Office of Biologics, except as provided in paragraph (c)(2) of this section. Official release is required for at least five consecutive lots or fillings, as applicable, manufactured after licensure of the product.

(2) After written notification of official release is received from the Director, Office of Biologics, for at least five consecutive lots or fillings manufactured after licensure of the products, and after the manufacturer receives from the Director, Office of Biologics, written notification that official release is no longer required, subsequent lots or fillings may be released by the

manufacturer under the requirements of § 610.1 of this chapter.

(3) The manufacturer shall not distribute lots or fillings, as applicable, of products that require sample submission under paragraph (a)(2)(iii) of this section until written notification of official release or notification that official release is no longer required is received from the Director, Office of Biologics.

Effective date. This regulation is effective on June 6, 1983.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: April 13, 1983.

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

[FR Doc. 83-11979 Filed 5-5-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Part 1

Procedures for Predetermination of Wage Rates

Correction

In FR Doc. 83-11198 beginning on page 19532 in the issue of Friday, April 29, 1983, make the following correction. On page 19536, second column, the title of Appendix A to 29 CFR Part 1 is corrected to read: "Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor."

BILLING CODE 1505-01-M

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)

Correction

In FR Doc. 83-11199, beginning on page 19540 in the issue of Friday, April 29, 1983, make the following correction. On page 19541, first column, second paragraph, the fourth line is corrected to read: "sections: Table of Contents at § 5.11; §§".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 983

Recreation Activities and Service Program

AGENCY: Department of the Air Force,
DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 983—Recreation Activities and Service Program of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 215-1, Vol. 13, has been revised and redesignated. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the CFR.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT:
Mr. Gordon West, HQ Air Force Military
Personnel Center, MPCSOC, Randolph
AFB, TX 78150, telephone (512) 652-
2855.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 983

Federal buildings and facilities,
Military personnel, Recreation and
recreation areas.

Accordingly, 32 CFR is amended by removing Part 983.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,
Air Force Federal Register Liaison Officer.

[FR Doc. 83-12181 Filed 5-5-83; 8:45 am]

BILLING CODE 3910-01-M

32 CFR Part 984

Air Force Aero Club

AGENCY: Department of the Air Force,
DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 984—Air Force Aero Club of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 215-1, Vol. 2, has been revised and redesignated. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which

substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: Date of publication.

FOR FURTHER INFORMATION CONTACT:
Mr. Gordon West, HQ Air Force Military
Personnel Center, MPCSOC, Randolph
AFB, TX 78150, telephone (512) 652-
2855.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 984

Aircraft, Airmen, Military personnel,
Government employees, Recreation and
recreation areas.

Accordingly, 32 CFR is amended by removing Part 984.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,
Air Force Federal Register Liaison Officer.

[FR Doc. 83-12181 Filed 5-5-83; 8:45 am]

BILLING CODE 3910-01-M

POSTAL SERVICE

39 CFR 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to the Postal
Contracting Manual.

SUMMARY: The Postal Service announces that it is revising the Postal Contracting Manual to increase by 35% the rates for procurement of international mail transportation by water to reflect current marine operating costs. Certain minor editorial changes were also made to some of the language of the section changed.

EFFECTIVE DATE: May 5, 1983.

FOR FURTHER INFORMATION CONTACT:
Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Federal Register (see 39 CFR 601.100), has been amended by the issuance of PCM Circular 83-4, dated May 5, 1983.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the Federal Register and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement.

PART 39—[AMENDED]

Explanation of these amendments to the Postal Contracting Manual follows:

Explanation of Changes

Section 19-504 is revised to increase by 35% the rates for procurement of international mail transportation by water to reflect current marine operating costs.

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-12170 Filed 5-5-83; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 67****National Flood Insurance Program; Final Flood Elevation Determinations; Illinois****Correction**

In FR Doc. 83-323 beginning on page 1061, in the issue of Monday, January 10, 1983, make the following correction:

On page 1063, in the table, under column "#Depth in feet above ground.

*Elevation in feet (NGVD)," entry on line three "'501" should read "'463"

BILLING CODE 1505-01-M

44 CFR Part 67**National Flood Insurance Program; Final Flood Elevation Determinations; Missouri****Correction**

In FR Doc. 83-5532 beginning on page 10655, in the issue of Monday, March 14, 1983, make the following correction.

On page 10664, in the table, under "Location", line two, "About 100 feet downstream *949" was incorrectly printed and nine entries were omitted. The following material should appear beneath the first entry reading "Just upstream of Mound Street".

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—CONTINUED

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		City Branch	Just upstream of Mound Street	*947
			About 100 feet downstream of Olive Street	*949
			Just upstream of Olive Street	*955
			About 100 feet downstream of Oak Street	*955
				*960
			Just upstream of Francis Street	*973
			Just downstream of Missouri Pacific Railway	*992
			Just upstream of Missouri Pacific Railway	*998
			About 420 feet upstream of Missouri Pacific Railway	*999
		Carter Branch	Mouth at Mill Race	*943
			Just upstream of State Highway 96	*949

BILLING CODE 1505-01-M

44 CFR Part 67**National Flood Insurance Program; Final Flood Elevation Determinations; Michigan and Nebraska****Correction**

In FR Doc. 82-29169 beginning on page 47581, in the issue of Wednesday, October 27, 1982, make the following corrections:

1. On page 47585, in the table, under column "#Depth in feet above ground. *Elevation in feet (NGVD)," entry on line thirty-one from the bottom, "'745" should read "'754."

2. On page 47587, in the table, under column "#Depth in feet above ground. *Elevation in feet (NGVD)," entry on line five, "'1336" should read "'1346"

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION**49 CFR Part 1033**

[49th Rev. S.O. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Forty-Ninth Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Public Law 96-254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such

tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 12:01 a.m., May 3, 1983, and continuing in effect until 11:59 p.m., July 31, 1983, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840 or 275-1559.

Decided April 29, 1983.

SUPPLEMENTARY INFORMATION:

Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued rail service over RI's lines pending the implementation of long-range solutions, this order permits carriers to provide service to shippers which may otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by deleting at Item 8., the authority for the Cadillac and Lake City Railway Company (CLK) to operate between Colorado Springs, Colorado and Limon, Colorado, as this trackage has been leased to the Colorado and Eastern Railway Company (COE). Appendix A is further revised by deleting at Item 8., the authority for the CLK to operate at Denver, Colorado, as this trackage has been sold to COE. Remaining segments in Item 8 are redesignated accordingly in this appendix.

Appendix A is further revised in this order, by adding at Item 25., the authority for COE to operate between Colorado Springs, Colorado and Limon, Colorado. COE has a Lease/Purchase option on this property with the Trustee.

Appendix B of Forty-Third Revised Service Order No. 1473 is unchanged and is incorporated into this order by reference.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the named appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedures are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

PART 1033—[AMENDED]

It is ordered, that

§ 1033.1473 Forty-Ninth Revised Service Order 1473.

(a) *Various Railroads Authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee).* Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the

property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96-254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

1. In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these

lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., May 3, 1983.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., July 31, 1983, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Public Law 96-254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033 Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.
Agatha L. Mergenovich,
Secretary.

Appendix A—RI Lines Authorized To Be Operated by Interim Operators

1. *Peoria and Pekin Union Railway Company (PPU):*
A. Mossville, Illinois (milepost 148.23) to Peoria, Illinois (milepost 161.0) including the Keller Branch (milepost 1.55 to 6.15).
2. *Union Pacific Railroad Company (UP):*

- A. Beatrice, Nebraska.
- B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska.
3. *Toledo, Peoria and Western Railroad Company (TPW):*
- A. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.
4. *Chicago and North Western Transportation Company (CNW):*
- A. From Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri.
- B. From Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0).
- C. From Inver Grove (milepost 344.7) to Northwood, Minnesota.
- D. From Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6).
- E. From East Des Moines, Iowa (milepost 350.8) to West Des Moines, Iowa (milepost 384.34).
- F. From Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7).
- G. From Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0).
- H. From Allerton, Iowa (milepost 383) to Trenton, Missouri (milepost 415.9).
- I. From Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).
- J. From Iowa Falls (milepost 97.4) to Estherville, Iowa (milepost 206.9).
- K. From Brice, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7).
- L. From Palmer (milepost 454.5) to Royal, Iowa (milepost 502).
- M. From Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2).
- N. From Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids.
- O. At Sibley, Iowa.
- P. At Hartley, Iowa.
- Q. From Carlisle to Indianola, Iowa.
- R. At Omaha, Nebraska (between milepost 502 to milepost 504).
5. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):*
- A. From Newport, Minnesota to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.
- B. From Davenport (milepost 182.35) to Iowa City, Iowa (milepost 237.01).
6. *Missouri Pacific Railroad Company (MP):*
- A. From Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5).
- B. From Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0).
- C. From Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.
7. *Norfolk and Western Railway Company (NW):* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District Track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.
8. *Cadillac and Lake City Railway Company (CLK):*
- *A. From Limon, Colorado (milepost 530.75) to Caruso, Kansas (milepost 430.0) a distance of 100.75 miles.
- *B. Over-head rights from Caruso, Kansas (milepost 430.0) to Colby, Kansas (milepost 387.0), a distance of approximately 43 miles, in order to effect interchange with the Union Pacific Railroad.
9. *Baltimore and Ohio Railroad Company (BO):*
- A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.
- B. From Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.
10. *Keota Washington Transportation Company (KWTR):*
- A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.
- B. At Vinton, Iowa (milepost 120.0 to 123.0).
- C. From Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).
11. *The La Salle and Bureau County Railroad Company (LSBC):*
- A. From Chicago (milepost 0.60) to Blue Island, Illinois (milepost 18.61), and yard tracks 8, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.
- B. From Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island, Illinois.
- C. From Gresham (subdivision 1; milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.
- D. From Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights and to effect interchange at the Kensington and Eastern Yards.
12. *The Atchison, Topeka and Santa Fe Railway Company (ATSF):*
- A. At Alva, Oklahoma.
- B. At St. Joseph, Missouri.
13. *Iowa Northern Railroad Company (IANR):*
- A. From Cedar Rapids, Iowa (milepost 100.5), to Manly, Iowa, (milepost 225.1)
- B. At Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.
14. *Iowa Railroad Company (IRRC):*
- A. From Council Bluffs (milepost 490.15) to West Des Moines, Iowa (milepost 384.34) a distance of approximately 105.81 miles.
- B. From Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 485.1) a distance of approximately 24.4 miles.
- C. From Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.
- D. Overhead rights from West Des Moines, Iowa (milepost 364.34) to East Des Moines, Iowa (milepost 350.8). (This trackage is currently leased to the CNW, see Item 5.E.)
- E. From East Des Moines, Iowa (milepost 350.8) to Iowa City, Iowa (milepost 237.01) a distance 113.79 miles.
- F. Overhead rights from Iowa City, Iowa (milepost 237.01) to Davenport, Iowa (milepost 182.35), including interchange with the Cedar Rapids and Iowa City Railway. (This trackage is currently leased to the MILW, see Item 6.D.)
- G. From Bureau, Illinois (milepost 114.2) to Davenport, Iowa (milepost 182.35)
- H. From Rock Island, Illinois through Milan, Illinois, to a point west of Milan sufficient to serve the Rock Island Industrial Complex.
- I. At Rock Island, Illinois including 26th Street Yard.
- J. From Altoona to Pella, Iowa.
15. *Missouri-Kansas-Texas Railroad Company (MKT):*
- A. From Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.
16. *Chicago Short Line Railway Company (CSL):*
- A. From Pullman Junction easterly for approximately 1000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.
- B. From Rock Island Junction westerly for approximately 3000 feet to Irondale Wye.
17. *Kyle Railroad Company (Kyle):*
- A. From Belleville (milepost 187.0) to Caruso, Kansas (milepost 430.0), a distance of approximately 243 miles. KYLE will be responsible for the maintenance of the jointly used track between Colby and Caruso as mutually agreed upon with CLK, and for coordinating operations.
- B. From Belleville (milepost 187.0) to Mahaska, Kansas (milepost 170.0) a distance of approximately 17 miles.
- C. From Belleville (milepost 225.34) to Clay Center, Kansas (milepost 178.37) a distance of approximately 47 miles.
18. *North Central Oklahoma Railway, Inc. (NCOK):*
- A. From Mangum, Oklahoma (milepost 97.2) to Anadarko, Oklahoma (milepost 18.14).
- B. From El Reno, Oklahoma (milepost 515.0) to Hydro, Oklahoma (milepost 553.0) a distance of approximately 38 miles.
- C. From Geary, Oklahoma (milepost 0.0) to Homestead, Oklahoma (milepost 42.8) a distance of approximately 43 miles.
- D. From North Enid, Oklahoma (milepost 0.30) to Ponca City, Oklahoma (milepost 54.8) a distance of approximately 54.5 miles.

19. *South Central Arkansas Railway, Inc. (SCAR)*
A. From El Dorado, Arkansas (milepost 99) to Ruston, Louisiana (milepost 154.77).
20. *Burlington Northern Railroad Company (BN)*
A. At Burlington, Iowa (milepost 0 to milepost 2.06).
21. *Fort Worth and Denver Railway Company (FWD)*
A. From Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.
B. At North Fort Worth, Texas (mileposts 603.0 to 611.4).
22. *Omaha, Lincoln and Beatrice Railway Company (OLB)*
A. At Lincoln, Nebraska (milepost 559.16) to (milepost 561.37).
23. *Enid Central Railway Company, Inc. (ENIC)*
A. From North Enid, Oklahoma (Milepost 0.12) to Ponca City, Oklahoma (Milepost 54.8).
24. *Texas North Western Railway Company (TNW)*
A. From Hardesty, Oklahoma (milepost 119.20) to Liberal, Kansas (milepost 152.35) a distance of approximately 33.15 miles.
- + 25. *Colorado and Eastern Railway Company (COE)*
A. From Colorado Springs, Colorado (milepost 602.7) to Limon, Colorado (milepost 530.75) a distance of approximately 72 miles.
- * Changed.
+ Added.

[FR Doc. 83-12020 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1039

[Ex Parte No. 346 (Sub-8)]

Rail Carriers; Exemption From Regulation—Boxcar Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules (exemption).

SUMMARY: The Commission is exempting, with certain exceptions (see Appendix), the rail transportation of all commodities in boxcars from 49 U.S.C. Subtitle IV. The Commission retains jurisdiction in the area of car hire and car service, except that it allows railroads to impose charges for storage or return of empty boxcars and to negotiate bilateral care hire agreements. The Commission also retains jurisdiction over rates for the transportation of nonferrous recyclable materials. The exemption is based on findings that regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power by

railroads. The Commission also finds under 49 U.S.C. 11122 that the permitted actions affecting car charges will encourage efficient boxcar use.

DATE: The exemption is effective on November 7, 1983.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245;

or

Thomas Gire, (202) 275-7759.

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, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

Authority: 49 U.S.C. 10321(a), 10505, and 11122.

Decided: April 29, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison. Chairman Taylor and Commissioner Simmons dissented with separate expressions.

Agatha L. Mergenovich,
Secretary.

Chairman Taylor dissenting:

A thoughtful review of this decision, wherein the exemption of rail traffic moving in boxcars is approved, can only lead to the conclusion that the grant of such exemption is based upon wishful thinking and unverifiable predictions and assumptions, all of which rely more on theory than fact. This Commission has been charged by Congress with the duty of rationally deregulating the railroad industry in a manner consistent with the National Rail Transportation Policy. To this end, we have been given standards to consider, but reasonable conclusions predicated upon such standards cannot be drawn in the absence of adequate supporting evidence.

Advocates of the exemption in this proceeding consist of one railroad,¹ two government agencies, and a handful of shippers, most of whom do not even use boxcars. On the other hand, a multitude of parties opposed the exemption by the submittal of an enormous body of evidence demonstrating the fallacies inherent in the proposal. These parties included the railroads themselves (except for the Southern Pacific on the rate issue) and the general thrust of their opposition was that the boxcar exemption will radically alter both financial and operational relationships throughout the entire railroad industry. Accordingly, those opposing the exemption comprise virtually

every group which participates in or depends upon our national railway system.²

Moreover, this exemption is totally unlike any other proposed by either the Commission or the railroad industry. It cannot be compared with a commodity exemption which deals with individual products moving in specific markets, thereby allowing for a rational analysis of the probable effects of the exemption.³ Nor can the TOFC/COFC exemption serve as precedent, since that exemption was specifically supported by the Staggers Act, 49 U.S.C. 10505(f), and its legislative history.⁴

To grant the exemption, the Commission must make certain findings in accordance with the statutory criteria set forth in 49 U.S.C. 10505 based upon the evidence of record. The almost complete lack of positive response to this exemption, coupled with the embarrassing paucity of supporting evidence, should have led to the conclusion that the proposal under consideration fails to satisfy any of the criteria of Section 10505. Consequently, a denial was clearly mandated, because the Commission cannot make the requisite findings to grant the exemption.

¹ It bears repeating here that denial of this proposed exemption was supported by: (1) Two branches of the government, the Departments of Defense and Agriculture, which, as large shippers, have legitimate commercial interests in the rail transportation business; (2) The Association of Western Railways (including the Chicago & North Western Transportation Company, Burlington Northern Railroad Company, Denver & Rio Grande Western Railroad Company, Green Bay & Western Railroad Company, Illinois Central Gulf Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Elgin, Joliet & Eastern Railway Company, Missouri-Kansas-Texas Railroad Company, Soo Line Railroad Company, Missouri Pacific Railroad Company, Western Pacific Railroad Company, Kansas City Southern Railway Company, and Union Pacific Railroad Company), one-third of the individual Class I railroads and about 20 short line railroads. (The American Association of Railroads also opposes the car service/car hire portion of the exemption.); (3) Eleven state and local agencies; (4) Nine private car owners; (5) Over 70 shippers, associations, and nonrail carriers; and (6) numerous members of Congress.

² The railroads themselves have stated that the most logical and reasonable approach to exemptions is by commodity and not car type.

³ See H.R. Rep. No. 1035, 96th Cong., 2nd Sess. 60 (1980). Further, the special nature of TOFC traffic makes it highly competitive and versatile. TOFC/COFC operations are from a limited number of ramp origins to a limited number of ramp point destinations. In 1980, the number of boxcar loads shipped was about 200% of the TOFC car loadings. The predominant rate form for TOFC is FAK (Freight all kinds) and the commodity is the trailer—usually a 40 foot van. There is generally no rate differential on different kinds of goods sealed in the trailer. This enables shippers to switch modes at whim, and provides built-in controls against abuses and excessive rates.

¹ The Southern Pacific and its subsidiary the St. Louis Southwestern support only the rate exemption.

The Statutory Criteria of 49 U.S.C. 10505(a)(2)

Limited Scope:

No one has made a serious effort to argue that a proposal affecting 40 percent of the total car miles in the U.S. is of limited scope. Various parties have noted that the exemption would encompass 25 percent of the national rail car fleet, 22 percent of the country's rail traffic, 25 percent of Conrail's total traffic, and 90 percent of the major commodity groups. Of the 35 major commodity classifications, 34 have boxcar movements. Of these 34, 14 move by boxcar at least 50 percent of the time. In 1981, there were 3,237,676 boxcar shipments in this country, and boxcar traffic accounted for 42 percent of total rail movements into and out of the Eastern Territory. Conrail originates and terminates more boxcars than any other railroad and has control over one out of every six boxcar shipments. Conrail serves 2,690 stations in the Northeast. These stations serve industrial areas which turn out 84 percent of the manufactured goods produced in that section of the country. Conrail also loads and unloads 54.1 percent of all boxcar traffic in that section. In light of these figures, a limited scope argument is clearly not available.

Abuse of market power: Nor can an appropriate finding be made with regard to the abuse of market power criterion. To determine whether market power is likely to be abused, an adequate definition of the market is necessary. But product markets are defined by commodities not car types, and it is the contents of a car, not the car type, that competes on the open market. The fundamental premise of the exemption proposed herein is that all commodities (except nonferrous recyclables), when transported in boxcars, move competitively. This assumption requires an enormous leap of faith, as boxcar freight is exceptionally diverse. It covers a wide range of commodities, rates, competitive situations, characteristics, locations, and destinations, all of which go into the definition of a market. Because of the lack of focus of this proposal, it is not possible for the Commission to make a finding that the application of every rate provision of the Interstate Commerce Act is no longer necessary for all boxcar transportation.

Even were such a finding possible, the complete inadequacy of the record precludes the Commission from drawing the necessary conclusions.⁶ The

evidence presented by Conrail does not reflect or represent the rest of the country outside the Northeast.⁷ The Northeast differs from the rest of the country in number of cars terminated, manufacturing output, level of consumption, population, length of haul of shipments, and efficiency of rail carriers. The nationwide statistics on which the majority relies to fill the gaps are well over six years old.⁸ Moreover, the majority decision doesn't even attempt to show that these studies, conducted during the restrictive era of rail regulation, bear any relationship to the current railroad industry, which has changed so remarkably in the last few years, especially since enactment of the Staggers Act.

Also, much traffic that now moves in boxcars tends to be inherently rail oriented. But the broad brush methods of support used here ignore all but the most general figures. In spite of the fact that the Commission specifically requested disaggregated data to determine which markets were competitive, Conrail chose to rely on the Reebe study which is not broken down further than the three digit Standard Transportation Commodity Code (STCC). At this level, the data are too generic and not specific enough to enable an adequate analysis of the competition in any particular market.⁹

Another major objection to this proposal is that many commodities, which can be regarded as "boxcar traffic", also move in other types of railroad equipment, and such commodities will not compete in the same markets when moving in different types of railroad equipment. This situation presents the substantial likelihood that the deregulation of those commodities, when moving in boxcars, will affect their marketing merely because of an anomaly of regulatory policy.

Chesapeake and Ohio Railway Co. et al. v. United States of America, 7th Cir. Nos. 81-2286, 82-1625, and 82-1693 (April 4, 1983). The court held that there was not substantial evidence to support the conclusion that certain joint rate cancellations were consistent with the public interest because, among other things, the Conrail study on which the Commission relied heavily was deficient since (i) it considered only some of the traffic; i.e. that on which Conrail was a terminating carrier, and (ii) it was in grossly aggregated form.

⁶ See Appendix A, n.1 of majority decision.

⁷ See Appendix B, n.1.2 and Appendix C, n.1 of majority decision.

⁸ For example, STCC 331 covers steel works, rolling mill or other reduction plant products. The STCC is then further divided into 245 separate commodity groups. Another example is STCC 204, grain mill products, which, as Conrail has shown, travels 41.5% in boxcars. However, when this is expanded to the four digit level, there are six separate subgroups with boxcar shares of from 11.5 to 97.2 percent!

A perfect example is the movement of grain, soybeans, and sunflowers seeds. In our recent decision in *Ex Parte 346* (Sub-No. 14), *Rail General Exemption Authority-Miscellaneous Agricultural Commodities* (not printed), decided Feb. 17, 1983, we specifically declined to include grain and soybeans. After considerable analysis, however, we also concluded that sunflower seeds should not be exempted. Now, with only a brief reference by the majority to grain generally, all these commodities will be exempt when transported in boxcars. Such an obvious undoing with the left hand of what the right hand has done is nonsensical to say the least.

Different rules and rates for different types of equipment surely will lead to a distortion in the demand for certain cars, because equipment choices will be influenced by the boxcar exemption rather than the efficiencies and benefits of particular equipment relative to any given movement. This is a special concern of shippers, because even though they may request a specific type of equipment, if they receive an unregulated boxcar, their choice may be to accept it or face unacceptable delays in receiving the requested equipment. It is ironic that this so-called "deregulatory" proposal will, in actuality, interfere with decisions based on natural market forces and perhaps even encourage the continued use of equipment which many in the railroad industry believe is eventually destined to become obsolete.

Thus, the proposed exemption fails the tests of both 10505(a)(2) (A) and (B). It is not of limited scope, and the record cannot support a finding that there will not be an abuse of market power, because there is no evidence to determine what the market is.

The Modified Car Hire/Car Service Proposal

To fully consider the relationship of this exemption to the statutory criteria and the National Rail Transportation Policy, it is first necessary to discuss the serious problems raised by the grant of the modified car hire and service proposal.

If the car hire and car service issues occupy such a prominent place in the record, it is with good cause, as they lie at the heart of this Conrail-initiated proceeding, which is really concerned with how the car hire and distribution system has worked and how it should work. Under the current system, both the provider and user of cars are restricted in their decisionmaking. The owner has no control when the car is off line, and users are restricted in terms of

⁹ Compare the aggregated data for the Northeast supplied by Conrail in this proceeding with No. 30676, *Changes in Routing Provisions—Conrail—July 1981*, 365 ICC 753 (1982) (remanded).

car supply availability. Therefore, it has been properly argued that some effort should be made to move toward a more market-based system.

The problem with the modified Conrail proposal,* as I see it, is that while the individual steps proposed, taken in isolation, seem to be key ingredients of a market based system, when superimposed over the current system, they turn out to be logically incompatible.

Consider first the imposition of empty mileage charges and reclaim per diem after 3 days. This puts using roads in a position to make car use decisions that affect a third party's costs. Using roads will control whether the owning road incurs empty movement charges, on excess cars to remote points, by deciding what cars to load for given shipments.

This is the key to the objections registered by both large and small carriers. As the majority recognizes, shortline railroads will be severely affected by Conrail's modified proposal. For instance, a shortline could purchase cars for the use of its shippers and then load these cars for termination on another line in the same region. But that latter line could then send the reloaded cars thousands of miles away. If the original road needed the cars for its shippers, it would have to pay the empty mileage charge to secure return.

Another problem of even greater magnitude for the shortlines is that their share of the freight revenues may not even equal the empty mileage charges assessed. The long haul road, on the other hand, will receive the benefit of both the greater share of the revenue plus all the empty mileage charges. In many instances, it would even be to the holding road's advantage to move this equipment the longest route possible in order to maximize the mileage charges. Moreover, it certainly seems peculiar to allow a terminating carrier to assess demurrage on shippers who do not timely release cars, and then allow such terminating carrier to also assess charges on the carrier that owns the cars once they are empty. Whether the

shortlines can survive until they reach the majority's nirvana of having equal bargaining power with Conrail is indeed problematical.

Keeping in mind the Commission's retention of reciprocal switching obligations, the majority's effort to graft a little "free market" onto regulation can be expected to produce some serious difficulties. Regardless of whether there is an agreement between the parties, compulsory interchange will require Conrail and other roads to accept whatever car is tendered for further movements—no matter what its expense. The receiving road cannot refuse to accept a car.

Equally shaky are the majority's predictions regarding the incentive to own boxcars. 49 U.S.C. 11122(a) requires the Commission to encourage the purchase, acquisition, and efficient use of freight cars. However, the investment risk that owners would be subject to by virtue of Conrail's modified proposal is clearly unwarranted, especially as control of the cars has not been offered as a quid pro quo. One does not move in and out of the freight car business on short notice. Any disincentive to invest in freight cars can result in later shortages, since there is a built in time lag of many months between the time a car is ordered and the time it is delivered.

High car costs and empty car miles are an important concern, not only to Conrail, but also to many other railroads. The solution is not to reward one at the expense of all the others. Clearly, a process which penalizes owners, be they shippers, railroads, or third parties (who after all are largely supplying the debtor roads such as Conrail with car capacity) is not what Congress envisioned. The Commission, the AAR, and all other interested parties should be directing their efforts toward finding an overall solution, not a makeshift one.

The Rail Transportation Policy of 49 U.S.C. 10101a

After considering all the individual issues in an exemption proposal, the Commission must then bring them together for a balancing of the many goals set forth in the National Rail Transportation Policy.

The broad policy arguments used to support the exemption herein proposed are the same ones that are generally relied upon to support every deregulatory action, e.g., less paperwork and pricing flexibility. However, the necessity of individual agreements with every shipper and car owner should more than offset the reduced amount of

paperwork that must be filed with the Commission, and without resort to the exemption, an abundance of price flexibility is already available under the current statutory system. With particular reference to pricing flexibility, one need only review the many protests and complaints filed in the last year by shippers and carriers regarding cancellations of joint rates and routes to understand that existing flexibility is already producing serious shipper and carrier concern.¹⁰ Thus, the majority is correct that the exemption will eliminate, at least with respect to boxcar movements, "litigation and other expensive procedural obstacles" placed in a railroad's way by Congress. In any event, such general "benefits," even if balancing allows them to be characterized as such, cannot outweigh the needs of our national rail system as a whole.

The goal of the National Rail Transportation Policy is to promote and ensure the continuation of a healthy railroad system. To this end, regulation is recognized as a legitimate function of the Federal government to (i) prevent discrimination against shippers or connecting carriers, (ii) facilitate the establishment of single factor through rates, (iii) publicize rail rates, (iv) assure shippers that traffic will move efficiently, and (v) provide incentives for investment.

49 U.S.C. 10101a, subparagraphs (1), (3), (4), (5), and (6), emphasize the importance of competition, stress the need for reasonable rates and adequate revenues, and accentuate the necessity of maintaining a financially sound and integrated rail system. However, the very nature of the boxcar exemption is inapposite to all these goals. True competition relies on a rational system of decision making based upon market realities—not on whether a commodity moves in a boxcar. Reasonable rates and adequate revenues should go together to benefit both shipper and carrier—and not just Conrail. Ratemaking decisions should be based on more than the type of equipment used. In addition, it cannot be said that the proposed exemption will encourage equipment investment or the efficient movement of traffic. What can be predicted is that boxcars will simply become the joker in the deck, with their own special compensation rules grafted onto the current system.

* I would like to point out that the notice of this proposal was made under the auspices of 49 U.S.C. 10505, which authorizes exemptions from regulation. This proposal, which will authorize the authority to assess charges at certain levels and to store empty cars while reclaiming car rental charges, is a regulation—not an exemption. Certainly 49 U.S.C. 11122 would permit such regulations, but only after proper notice. Respondents who commented on this proposal, as noticed by the Commission under 10505, were clearly denied the opportunity to address it under 11122. These sections have different purposes and different standards. The courts have consistently found procedural defects of this nature to be fatal for lack of proper notice.

¹⁰ See, for example, No. 39176, *The Chlorine Institute, Inc. v. Atchison, Topeka & Santa Fe Railway Co., et al.*; No. 38676, *Changes in Routing Provisions*, *supra*, n.5.

The National Rail Transportation Policy also instructs the Commission to cooperate with the States on transportation matters. 49 U.S.C. 10101a(9). In spite of having recently forced the States to accede to federal exemptions as the price for certification of intrastate railroad jurisdiction, the majority has not even attempted an analysis of the effect of this massive boxcar exemption on intrastate rail transportation.

Certainly the proposed exemption will not encourage (per 49 U.S.C. 10101a(10)), the elimination of noncompensatory rates, as many smaller carriers will be forced to that level to retain any traffic at all. Nor can it be argued (per 49 U.S.C. 10101a(13)) that the proposed exemption will prohibit predatory pricing and practices, avoid undue concentrations of market power, and prohibit unlawful discrimination, because there will be no forum to which a carrier or shipper may bring a complaint. Lastly, contrary to 49 U.S.C. 10101a(4), the proposed exemption will seriously endanger our rail transportation system, whose healthy continuation Congress, through its stated policy, wishes to maintain.

Summary

I have strongly supported and openly invited resort to the Commission's exemption authority as a means of leading, perhaps even pushing the railroad industry toward more reliance on themselves and the marketplace. To date, I believe such efforts have been crowned with success, in that the industry's requests for exemptions, together with the Commission's responses, have been genuinely responsible in every instance that comes to mind. Today, however, the majority has mandated a step backward by allowing deregulatory zeal to impose an unworkable system on an unwilling public. This is the kind of irresponsibility which can only serve the interests of those who are patiently searching for reasons to justify reregulation. I deeply regret the ammunition provided by the majority's decision in this proceeding.

Commissioner Simmons, dissenting:

A grant of Conrail's exemption from regulation of rates on boxcar traffic flies in the face of the evidence of record and the criteria of section 10505.

Of particular concern to me is that no persuasive arguments have been raised which demonstrate that we can state for certain that there is absolutely no potential for abuse of market power. The Commission is required to make an affirmative finding that continued regulation is not needed to protect

shippers from the abuse of market power. A number of shippers have presented persuasive data to demonstrate that the likelihood of market power abuse is great on a significant amount of traffic. Conrail and other supporters of the exemption have not amply contradicted those assertions. Instead, Conrail has submitted evidence limited to the Northeast and fails to present any picture of the country as a whole or of specific classes or types of commodities.

An exemption of boxcars from car hire and car service regulation would not be consistent with the national rail transportation policy. The evidence suggests that such an exemption would only serve the parochial interest of Conrail at the expense of the shippers, the other railroads, and the public.

Appendix

PART 1039—[AMENDED]

Part 1039 of Chapter X of Title 49 of the Code of Federal Regulations is amended by the addition of a new § 1039.14 as follows:

§ 1039.14 Boxcar transportation exemption.

(a) The Rail transportation of all commodities in boxcars is exempt from the provisions of 49 U.S.C. Subtitle IV except as otherwise provided in this section.

(b) The Commission retains jurisdiction in the following areas:

- (1) Car hire and car service.
- (2) Mandatory interchange of equipment.
- (3) Reciprocal switching or joint use of terminal facilities.
- (4) Car supply.
- (5) Rates for the transportation of recyclable or recycled materials other than iron and steel.

(6) Freight car pooling agreements.

(c) Rail carriers are authorized to take the following actions with respect to boxcar equipment use:

- (1) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Commission. The empty mileage charge is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustment factors published periodically by the Commission in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. In applying those factors, the figure of 35 cents shall be treated as having been in effect on October 1, 1982.
- (2) Store empty cars and reclaim car hire payments beginning at the

expiration of a 72-hour grace period after the car is made empty.

(3) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(d) Carriers must continue to comply with Commission accounting and reporting requirements. Railroad tariffs pertaining to the exempted transportation of commodities in boxcars will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

(49 U.S.C. 10321(a), 10505 and 11122)

[FR Doc. 83-12023 Filed 5-5-83; 8:45 am]

BILLING CODE 7305-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 30503-74]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; closure.

SUMMARY: The Secretary of Commerce issues this notice to close the commercial fishery for king mackerel conducted by vessels fishing hook-and-line gear in the fishery conservation zone in the South Atlantic and Gulf of Mexico on May 6, 1983. The Director, Southeast Region, National Marine Fisheries Service has determined that the commercial hook-and-line quota of 3,877,200 pounds of king mackerel has already been reached. This action will ensure that the quotas for king mackerel are not exceeded during the current fishing year.

EFFECTIVE DATE: Closure is effective from 2400 hours, Eastern Daylight Time, on May 6, 1983.

FOR FURTHER INFORMATION CONTACT:

Jack T. Brawner (Director, Southeast Region, National Marine Fisheries Service), 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) was developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under authority of the Magnuson Fishery

Conservation and Management Act, as amended. Rules to implement the FMP were promulgated on February 4, 1983 (48 FR 5270). The Secretary is required under § 642.22(a) of these regulations to close any segment of the king or Spanish mackerel fishery when its annual quota has been harvested, by publishing a notice in the *Federal Register*. The regulations at § 642.21(a)(1)(ii) specify an annual commercial hook-and-line quota of 3,877,200 pounds of king mackerel.

The Regional Director has determined, based on the most recently reported catch figures, that commercial fishermen using hook-and-line gear have already harvested 3,990,000 pounds of king mackerel. Hence, commercial fishing for king mackerel with hook-and-line gear must cease at 2400 hours on May 6, 1983.

This action is required by 50 CFR § 642.22(a), and complies with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 642

Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 3, 1983.

Joseph W. Angelovic,
*Acting Deputy Assistant Administrator for
Science and Technology, National Marine
Fisheries Service.*

[FR Doc. 83-12236 Filed 5-4-83; 10:08 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 48, No. 89

Friday, May 6, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Exceptions Processes, Reopening of Comment Period

AGENCY: Administrative Conference of the United States; Committee on Regulation.

ACTION: Reopening of comment period.

SUMMARY: The Administrative Conference Committee on Regulation is considering a proposed recommendation on the subject of "administrative exceptions processes". This topic includes agency procedures involved in the granting of waivers, exemptions, variances, or other individualized exceptions to rules of general applicability. Views and supporting factual material are requested to be submitted to aid the Committee in its consideration. The original request for comments (48 FR 14910) is hereby extended for an additional 60 days.

DATE: *Comment Deadline:* July 6, 1983. One copy is sufficient. Comments received after the deadline will be considered to the extent feasible.

ADDRESS: Send Comments To: William C. Bush, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037; telephone (202) 254-7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference Committee on Regulation is working toward development of a recommendation concerning agency procedures and practices in the operation of federal agency exceptions processes. The Committee's proposed recommendation, reproduced below, is based largely on a report by our consultant, Professor Peter Schuck of Yale Law School. Copies of

Professor Schuck's report, *When the Exception Becomes the Rule: Regulatory Equity, the Exceptions Process, and the Formulation of Energy Policy* (February 16, 1983), are available on request.

Although the consultant's report deals mainly with a study of the Office of Hearings and Appeals at the Department of Energy, the Committee has attempted to derive from the study such recommendations as appear to be useful government-wide. The Committee is particularly interested in the views of those who have had direct experience with exceptions processes in other regulatory agencies.

The Committee decided that the original 21-day comment period did not allow sufficient time for a full public airing of the issues treated in the proposed recommendation. All comments received during the initial period will receive full consideration.

The Committee will meet shortly after the extended comment deadline to consider all comments received and to determine whether and in what form to propose a final recommendation to the full Administrative Conference in December. Notice of that meeting will appear in the *Federal Register*.

All comments submitted to the Committee will be placed in a file available for public inspection during normal business hours (9:00 a.m. to 5:30 p.m. Monday through Friday, excluding federal holidays) at the Office of the Chairman of the Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037.

Activities of the Committee on Regulation are subject to the Federal Advisory Committee Act (Pub. L. 92-463).

Proposal on Which Comments Are Requested

Proposed Recommendation

Administrative Exceptions Processes

A. Congressional Oversight

1. Congress should review the effectiveness, procedural fairness, and political accountability of the administrative exceptions processes established under existing legislation, including the adequacy of legislative, administrative, and judicial controls over those processes. This may be accomplished during the course of

periodic congressional oversight of agency programs.

2. Congress should prescribe the equitable or other criteria that shall govern an agency exceptions process. Congress should also require that agencies issue regulations further defining those criteria and prescribing the procedures to be used in exceptions proceedings.

3. Congress should determine whether and to what extent agencies are circumventing rulemaking requirements by excessive reliance upon exceptions processes. If an exceptions process is being used by an agency to resolve questions of broad policy significance, Congress should consider requiring that the official in charge of that process be subject to Senate confirmation.

4. Where an exceptions process is part of what was originally an emergency program, Congress should determine whether and to what extent the courts should continue to take the emergency into account in reviewing the legal validity of exceptions decisions.

B. Agency Procedures

1. Each agency with an exceptions program should establish procedures governing exceptions cases that reflect an analysis of the need for particularized regulatory equity in the applicable program. The procedures provided for relatively routine "hardship" applications and for those cases of broader policy significance should differ to take account of the differing demands for information, fairness, and legitimacy.

2. The procedures should provide for adequate notice to all interested members of the public of an application for exceptions relief. Relief should be granted or denied only after an opportunity for the development of relevant factual and policy issues. The degree of formality of the adjudicatory procedures used should depend upon the magnitude of the public and private interests at stake, the need for expeditious decision, the number of interested parties, the kinds of issues to be resolved, and the kinds of procedures that were originally employed to generate the "rule" from which relief is being sought. The agency should assume responsibility for ensuring that all significantly affected interests are in fact represented in the exceptions proceedings.

3. Where the program allows for emergency, interim relief, the procedures should include suitable mechanisms—such as an escrow fund, interest obligation, or expiration date for interim orders—to restore the *status quo ante* insofar as possible in the event that such relief is subsequently determined to be inappropriate.

4. The form and independence of the tribunal that is to decide exceptions cases should depend chiefly upon the regulatory policy significance of the exceptions decision and the value of exceptions relief to applicants. The greater the precedential and policy significance of an exceptions decision and the greater the advantage (competitive or otherwise) that the decision confers upon an applicant, the more closely the tribunal should be integrated into the policy-sensitive and politically-accountable decision processes of the agency. The more the exceptions decision is routine, without precedential significance, and purely equitable or "hardship" in nature, the more readily it may be delegated to other decision processes.

C. Coordination With Rulemaking

1. Where there is a relatively high degree of organizational independence between an agency's exceptions process and its rulemaking process, the two should be closely coordinated to ensure that important policy decisions and situation-specific equitable decisions are made using the procedures most appropriate to each.

2. When it appears to the exceptions tribunal that a decision under consideration is likely to have broad policy significance, it should promptly inform the agency office with primary rulemaking responsibility in order to give the rulemakers an opportunity to supplement or supplant the exceptions proceeding. Ordinarily, the exceptions tribunal should not decide such a case until the rulemaking office indicates that it does not intend to proceed.

3. If the exceptions tribunal proceeds to decide a case with broad policy significance, it should conduct the proceeding much as a rulemaker would, broadening participation in the pending adjudication and inviting public comments on all significant policy, factual, and remedial issues in the case. In addition, the exceptions tribunal should be expanded to include additional members drawn from the agency's policymaking organs, and the politically responsible agency head

should review and sign personally the orders in such cases.

Richard K. Berg,

General Counsel.

May 2, 1983.

[FR Doc. 83-12154 Filed 5-5-83; 8:45 am]

BILLING CODE 5110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A35]

Milk in the Southern Michigan Marketing Area; Emergency Decision on Proposed Amendment to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts on an emergency basis a proposed amendment to the Southern Michigan milk marketing order. The order change would provide handlers with limited transportation credits from the marketwide pool for certain Class III milk transferred to unusually distant outlets for surplus disposal. The change, which would apply only through August 31, 1983, was considered at a public hearing on April 7, 1983, in Romulus, Michigan (Detroit). The order change was requested by a cooperative association that represents a substantial proportion of the dairy farmers who supply milk to the Southern Michigan market.

The adopted order change is necessary to reflect current marketing conditions and to insure that all producers in the market share more equitably the costs of disposing of unusually large supplies of surplus milk that are expected during the months of May through August 1983. Marketing conditions are such that prompt amendatory action is required. For this reason, a recommended decision and the opportunity to file exceptions thereto have been omitted. The adopted amendment must be approved by at least two-thirds of the producers in the market before it can become effective.

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

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Section 556 and 557 of Title 5 of the United States Code and,

therefore, is excluded from the requirements of Executive Order 12291.

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. The amendment will promote more orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding: Notice of Hearing: Issued March 22, 1983; published March 28, 1983 (48 FR 12721).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held, 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 (7 CFR Part 900), at Romulus, Michigan (Detroit), on April 7, 1983. Notice of such hearing was issued March 22, 1983 (48 FR 12721).

Interested parties were given until April 14, 1983, to file post-hearing briefs on the proposals as published in the notice of hearing and on whether these proposals should be considered on an expedited basis.

The material issues on the record of the hearing relate to:

1. Whether the order should be amended to provide handlers with transportation credits from the marketwide pool on certain shipments of surplus milk during May, June, July and August 1983.

2. Whether emergency marketing conditions in the regulated area warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Transportation credits on surplus milk shipments.* The Southern Michigan milk order should be amended to provide handlers with limited transportation credits from the pool on certain movements of bulk fluid milk and condensed milk (whole or skim) to distant manufacturing plants. The credits should be made available as soon as possible and should continue through August 1983. Such credits are not now operative in the order.

Michigan Milk Producers Association (MMPA), a dairy farmer cooperative

association, proposed that the order be amended. The cooperative represents more than two-thirds of the producers whose milk is pooled under the order. MMPA's proposal would provide transportation credits of 3.6 cents per hundredweight per 10 miles to handlers for Class III milk moved to certain nonpool plants outside the State of Michigan and more than 150 miles from the pool plant from which transferred. The total of such credits would be deducted from the value of milk in the monthly marketwide pool. The proposed credits would be applicable only for the months of May, June, July and August 1983. The cooperative had proposed in the notice of hearing to include certain Class II and Class III milk that was transferred as eligible for the temporary transportation credit. At the hearing MMPA modified its proposal to include only Class III transfers of bulk fluid milk and condensed milk products.

A spokesman for MMPA said that the proposed credits would help ensure that all producers supplying the market would share in the cost of handling unusually large surplus milk supplies during the May through August period this year. According to the witness, increases in milk production and a decline in Class I sales will result in greater than normal quantities of milk having to be moved to distant manufacturing outlets this year than were moved last year during those months. The witness said that the increase in milk production is due to a general increase in milk output as dairy farmers attempt to maintain their cash flow during a time of economic difficulties in Michigan.

Three proprietary handlers supported MMPA's proposal. One handler urged the Secretary to adopt it as proposed. Two other handlers proposed that the pounds of bulk fluid cream be added to the products eligible for the credit. Additionally, these handlers urged that the temporary nature of the credits be eliminated, so that the proposed amendment would become a permanent part of the order.

The National Farmers Organization (NFO) opposed any change in the order. The NFO witness said that the proposed credits could have unsettling adverse effects on other milk markets. The witness contended that the transportation credits would subsidize the price of milk transferred from the Southern Michigan market to manufacturing outlets in Ohio and would displace local Ohio milk from those plants.

The Independent Cooperative Milk Producers Association (ICMPA) opposed the proposed amendment.

However the ICMPA witness said if the Secretary adopted MMPA's proposal, the 150 minimum mileage zone with no credit should start at the boundary of the marketing area and not at the transferor plant. Also, the witness said that no credit should be allowed on any milk going to a pool supply plant which is not located in Michigan.

A proprietary handler expressed reservations about the proposed amendment. He supported ICMPA's modification that the 150-mile no-credit zone start at the boundary of the marketing area. As further alternatives, the witness suggested measuring the mileage from the the State Capitol at Lansing and increasing the no-credit zone to 200 miles.

The witness for MMPA stated that the Southern Michigan market had experienced a 2.5 percent increase in milk production in 1982 over 1981. He also said milk production had increased at an accelerated rate during recent months; in November and December 1982, milk production had averaged 2.1 percent more than in the same months in 1981, whereas milk production in January and February 1983 had averaged 4.1 percent more than in January and February 1982. The witness said that packaged Class I sales within the marketing area had declined 4 percent in 1982 as compared to 1981. He indicated that these sales during January and February 1983 had declined by 6.5 percent as compared to January and February 1982. The witness stated that the increased supply of milk and decreased packaged Class I sales would cause an increased amount of milk to be moved to manufacturing outlets this year as compared to last year.

The MMPA witness said that in the months of May through August 1982 the cooperative had disposed of 105,000,000 pounds of surplus milk either in the form of bulk milk or condensed skim. The witness said that the cooperative had transferred 31,000,000 pounds of milk to plants outside its normal marketing area during that period. He said that the cooperative had hoped that the problem would not recur in 1983. However, the improvements that were anticipated did not materialize and it became clear that an unusually large volume of surplus milk would have to be disposed of during May through August 1983. The cooperative estimated that it will move 150,000,000 pounds of milk product, either in the form of bulk milk or condensed milk, in order to clear the market of surplus production in these four months. He said that the cooperative, after analyzing the January and February production increases, then

decided that it should propose the change in the order.

The witness said that absent the proposed change some handlers (primarily MMPA) would carry the full burden of disposing of the larger than normal milk supplies for the market during the May through August period this year. The cooperative's witness said that MMPA is a major supplier of milk to fluid milk plants in the market and is handling a very large share of the market's surplus milk dispositions. He noted that MMPA balances the daily, weekly and seasonal fluid milk needs of many plants that receive a portion of their supplies from independent producers. He said that such plants generally rely on the cooperative to dispose of any surplus milk associated with their operations. Also, he indicated that some plants call on the cooperative for "spot" loads of milk when they need it in addition to their regular supplies.

MMPA maintained that a substantial quantity of the extra milk supplies that will need to be handled this year will have to be moved to outlets that are more distant from the market than those that normally can accommodate the market's surplus dispositions. These would include outlets in Wisconsin, Ohio, Indiana, Illinois and Minnesota.

The cooperative proposed the transportation credits to help offset some of the costs MMPA expects to incur in moving these excess milk supplies to distant outlets to clear the market. The cooperative's spokesman presented data showing that during May through August 1982 MMPA paid an average of 3.6 cents per hundredweight per 10 loaded miles to contract haulers to move approximately 500 loads of milk out of the State of Michigan. He also presented rate quotations from haulers located outside of Michigan and these rates ranged from 3.3 cents to 4.7 cents per hundredweight per 10 loaded miles. Based on these data, the spokesmen claimed that 3.6 cents per hundredweight per 10 loaded miles is a reasonable reflection of the actual costs incurred to haul excess milk to distant plants and thus would be an appropriate rate for the proposed credit. The MMPA witness noted that if milk were shipped to a plant located outside of the State of Michigan and more than 150 miles from the transferor plant and if any part of the milk were used as Class I products, then no transportation credit would be available on any milk transferred to that plant during that month.

The MMPA spokesman identified the manufacturing plants and their locations that normally are used as outlets for surplus milk by fully regulated handlers

in the market. The locations of these plants provided the basis for the proposed provisions that would allow handlers a pool credit for transportation of milk to manufacturing plants more distant than those regarded as normal outlets.

In essence, MMPA contends that due to a severe imbalance between the supply and demand for milk, the order needs to be amended for a limited time so that all producers supplying the market will share equitably in the costs of disposing of the unusually large surplus milk supplies that will be associated with the Southern Michigan market during the May through August period this year. The credit would be available to any handler that incurred such costs. MMPA contends also that because of the unusual supply-demand situation, the current marketwide pooling arrangement is unable to provide such equity during this 4-month period.

MMPA claimed that absent the proposed amendment disorderly marketing conditions would develop. The burden of disposing of milk normally associated with the market would be more unevenly distributed than usually is the case. Unusually large milk supplies immediately adjacent to the market, as in Ohio, may preclude the use of manufacturing outlets there. MMPA believes that the proposed credit would provide a mechanism for handling the surplus milk and thus minimize the anticipated disorderly marketing conditions. MMPA urged the Department to adopt the proposal on an emergency basis in order that it can be made applicable to surplus milk handled during the months of May through August 1983.

A spokesman for a handler expressed full support for MMPA's proposal to amend the order. The spokesman urged the immediate adoption of the proposed amendment by the Secretary.

Two other handlers, supported MMPA's proposal and offered two modifications. Both spokesmen urged that bulk cream products be added to the products eligible for the transportation credit. Each stated that handlers receive more butterfat from producers than some handlers can profitably use in their bottling operations. They maintained that some handlers must dispose of the extra butterfat at a cost to the handlers. They claimed this handling of the unneeded butterfat was in fact a subsidy paid to producers by some handlers. They urged that the order be amended to allow a handler to recover some of the cost of disposing of his surplus butterfat.

The second modification offered by the two handlers was to eliminate the temporary nature of the proposed transportation credit. The spokesmen stated that the problem that some handlers had in disposing of the extra butterfat was a year-round problem. Thus, the spokesmen maintained, any transportation credit for the disposal of the surplus butterfat should not be limited to just the four months this summer.

The National Farmers' Organization (NFO), a cooperative that markets milk for its members in the Southern Michigan market, opposed the adoption of MMPA's proposal. The NFO spokesman noted that members' milk also is marketed on the Ohio Valley, Eastern Ohio-Western Pennsylvania, Indiana and Chicago Regional Federal order markets, which are contiguous with or nearby the Southern Michigan order market.

The NFO spokesman stated several reasons for opposing MMPA's proposal. One was that NFO members would have their returns from the sale of milk lowered if the proposed credits are provided. Also, it was NFO's view that subsidizing Class III shipments would have unsettling and adverse impacts on markets not included in this hearing but geographically adjacent to the Southern Michigan order. The concern was that surplus milk from the Southern Michigan market would be made available to manufacturing plants in Ohio at prices below those normally prevailing in Ohio. NFO held that such milk would displace local milk at Ohio manufacturing plants and that the Ohio milk then would have to be moved to distant outlets without the benefit of a transportation credit.

The witness contended that such a situation could domino into other markets, thus creating disorderly marketing conditions. NFO's witness also claimed that the proposed amendment departs from traditional Federal order pricing methods and may not be in accord with the Agricultural Marketing Agreement Act. He also stated that such provisions should not be adopted on an expedited basis because, in his view, there had not been sufficient time to fully analyze the impact of the proposal, if it were to be adopted.

The Independent Cooperative Milk Producers Association (ICMPA), a dairy farmer cooperative association located in Grand Rapids, Michigan, opposed MMPA's proposal. The ICMPA spokesman said that MMPA had acquired the two bottling plants and one manufacturing plant of the former

McDonald Cooperative in November 1979 and later had sold the manufacturing operation to non-dairy interests. He said that in 1980 surplus milk supplies were moved off the Southern Michigan market and that MMPA should have operated the manufacturing plant to handle the surplus milk supplies. The spokesman said it was a cooperative's responsibility to market the milk of its members and that the cost of marketing should be borne by the cooperative and not by the entire market. The ICMPA spokesman said that his cooperative balanced its members' surplus milk at its plant in Kalamazoo, Michigan. He stated that ICMPA had continually expanded and updated its equipment as its supply of milk increased.

The ICMPA spokesman stated that if the Secretary adopted MMPA's proposal, ICMPA proposed that the no-credit 150 mile zone start at the boundary of the order area and not at the transferor plant. He also states that no credit should be available on milk transferred to a Southern Michigan pool supply plant that is located outside of Michigan. The spokesman stated that the possibility of a back-haul might lower the cost of transporting surplus milk from the Southern Michigan market to manufacturing plants located in Wisconsin. The spokesman said that Wisconsin produced milk is moved by truck to Michigan and is pooled on the Southern Michigan market. He claimed that these trucks could be loaded with surplus milk which would be sent to manufacturing plants in Wisconsin. In this manner, he said the transportation cost of getting milk from Wisconsin to Michigan could be used to lower the cost of transporting surplus milk from Michigan to Wisconsin.

One handler expressed his reservations concerning MMPA's proposal. The spokesman supported the concept that the temporary transportation credit be provided to compensate a handler partially for the cost of clearing the market of unusually large volumes of surplus milk. He stated he was concerned about the possible displacement of local milk which might occur in other markets when milk and condensed products, in particular, from the Southern Michigan market might be offered for sale with a subsidized transportation credit. The spokesman said his company in Wisconsin disposed of surplus milk to Wisconsin manufacturing plants that MMPA identified as possible outlets for Michigan produced surplus milk. He was concerned that milk handled by his company might be displaced with

Michigan milk. He also indicated that his company operates a plant in Florida that uses condensed skim milk to make cottage cheese. He said he could get condensed skim from Michigan and possibly displace his normal Florida supplier for four months. He said he was concerned with the stability of the various milk markets in which his company operated plants and whether other markets could be disrupted by surplus Michigan milk.

The handler supported the ICMMA alternative proposal that the 150 mile no-credit zone start at the order boundary rather than at the transferor plant. As a further alternative, the spokesman said all mileage should be measured from Lansing, Michigan, the State Capital. The spokesman also proposed that the no-credit zone should be increased to at least 200 miles. He said the Secretary had used a 250 mile no-credit zone in the 1982 Louisville-Lexington-Evansville Federal milk order's temporary transportation credit decision and the 250 minimum mileage should be used here to maintain uniformity in all Federal milk orders.

Most of the participants who testified at the hearing, whether the supported the proposed order amendment or opposed it, generally conceded that surplus milk supplies will be much larger this spring than last year. This common perception is supported by data presented at the hearing.

Total producer milk pooled in the Southern Michigan market increased 3.3 percent in 1981 over the 1980 total and increased an additional 2.5 percent in 1982 over the 1981 total. At the same time, sales of Class I milk (fluid milk products) for the Southern Michigan market declined 6.0 percent in 1981 from 1980 and further declined another 5.4 percent in 1982 from 1981. The annual average Class I utilization percentage of the total producer receipts in the market was 50.4 percent in 1980. In 1981 and 1982 the annual Class I utilization percentage fell to 45.8 percent and 42.2 percent, respectively.

These data established that for the Southern Michigan market milk production is increasing and Class I milk sales are declining. It is concluded that there will be greater quantities of milk not needed for fluid use than a year ago. Further, the milk will need to be disposed of to manufacturing outlets during the months of May through August 1983, which includes months of seasonally high milk production. Accordingly, it is necessary to determine whether the over-supply situation will cause marketing problems that should be dealt with through

changes in the Southern Michigan milk order, as proposed by MMPA.

Based on the evidence presented at the hearing, the most likely marketing problem will be the disposition in the next few months of additional surplus milk to manufacturing outlets. If local manufacturing capacities are adequate to handle the milk, on unusual problems would be expected. However, the record indicates that there is not likely to be adequate manufacturing capacity in the normal surplus disposal area, particularly on weekends.

The best available approach to establish whether surplus milk must be moved unusually long distances to manufacturing plants from the Southern Michigan market is to look at what has happened in the past. During the months of May through August 1982 MMPA disposed of more than 105,000,000 pounds of surplus milk either in the form of bulk milk or condensed skim to plants outside the southern Michigan marketing area. The distant plants included plants in Wisconsin, Ohio, Indiana, Illinois, Minnesota, Kansas and New York.

Surplus milk disposal for the market is handled by cooperative associations and primarily by MMPA. This results because cooperatives are the major suppliers of milk in the market. MMPA represents more than 70 percent of the producers in the market and ICMMA represents more than 13 percent of them. Together these two cooperatives supply more than 85 percent of all milk pooled in the Southern Michigan market.

The evidence supports the MMPA claim that it is not only the major balancer of milk supplies for the market but that indirectly it is balancing the surplus milk of nonmember producers as well. The record establishes that there are pool distributing plants that receive only part of their supplies from MMPA.

The handling of a market's surplus milk can fall unevenly on different groups of producers. As indicated, MMPA supplies a number of distributing plants only on a partial basis. A handler may have a group of independent producers, or perhaps a particular group of producers who are members of a cooperative, from which milk is received on a regular basis throughout the year. As the milk production of these producers declines during the seasonal short-production months, the handler may need supplemental supplies and will buy milk from a cooperative such as MMPA. Then, during the spring, when milk production increases, the milk from the handler's regular producers may be sufficient, or nearly so, to cover his needs and he cuts back the

supplemental purchases from MMPA. In this situation, the producers who are the handler's regular suppliers do not share in the costs of balancing the handler's fluid needs. Instead, the costs fall, as in this example, solely on MMPA. If the surplus milk must be hauled unusually long distances, the cost burden can be particularly heavy on the cooperative.

Although the cost impact of handling surplus milk normally falls largely on members of cooperatives, nonmember producers are not immune to adverse impacts of the heavy supply situation. Proprietary handlers who do their own balancing may experience difficulties in disposing of the excess milk supplies of their independent producers. Any long-distance milk shipments must be borne by the handlers since they are required to pay producers the minimum Class III price of the milk. Their alternative is to refuse to accept all the milk produced by these dairy farmers. If the latter situation occurred, the impact would fall entirely on those dairy farmers. Any widespread occurrence of this situation could lead to disorderly marketing conditions.

Under normal conditions of supply and demand for fluid milk, the Federal order marketwide pools serve to assure that all producers supplying each market share in both the Class I and surplus values of the milk that is pooled in their market. Such pooling normally is adequate to achieve reasonable equity among all the market's producers. However, in the unusual circumstances that currently exist in the Southern Michigan area, the order may not provide a mechanism for ensuring that unusually high costs incurred in handling the market's surplus are shared equitably by all producers supplying the market. Accordingly, the Southern Michigan milk order should be amended along the lines proposed to maintain the degree of producer equity that otherwise is obtained through the operation of the marketwide pool for the market.

Two cooperative associations objected to the adoption of pool credits on surplus milk movements. Three handlers and one of the cooperatives offered modifications to MMPA's proposal. The points discussed below were raised at the hearing and/or in their post-hearing briefs.

NFO, in its post-hearing brief, contended that the proposed amendment is not necessary to preserve producer equity. Also, NFO said that the question of producer equity is so important that it should not be resolved without the Secretary first issuing a recommended decision and giving interested parties an opportunity to

comment. Such an approach would preclude any action by the Secretary in time to deal with the problem at hand. Timeliness is an issue here because the proposed remedy would be applicable for only a limited period this year.

NFO also expressed concern that the pool credit proposed by MMPA could disrupt the marketing of milk in areas such as Ohio and Indiana. Their brief indicated the Southern Michigan surplus milk could displace local milk in Ohio or Indiana. This local milk would then need to be transported to areas such as Wisconsin for its surplus disposal. NFO claimed, however, that this milk would not have any transportation credit available and its normal marketing would be disrupted.

It is recognized that with the pool credit on long-distance milk shipments there could possibly be a limited displacement of local milk at manufacturing plants. At least two factors, however, would tend to cause this not to happen. The pool credits adopted herein would not cover all of the costs of hauling the milk. Milk would have to be moved more than 150 miles from the transferor plant before a credit would start to apply. Thus, handlers moving the milk would have a strong incentive to find the highest possible price for their surplus milk.

Additionally, once milk moved beyond the no-credit zone, the incentive to move the milk to the nearest manufacturing plant would tend to be minimal since the 3.6-cent credit rate would cover most of the hauling to any point beyond the no-credit zone. This would tend to lessen the likelihood of handlers under the Southern Michigan order offering surplus milk at distress prices for the purpose of finding a closer outlet.

In this regard, it might be argued that the pool credit arrangement should provide some kind of incentive to move milk to the closest plant. However, in view of the concerns expressed about the possibility of "displaced" milk, it is concluded that this should not be done so that handlers will have more flexibility in seeking surplus milk outlets in other markets.

NFO disputed MMPA's contention that the pool credits were authorized by the Agricultural Marketing Agreement Act. NFO claimed that the pool credits would be, in effect, an adjustment to the Class III price. In this regard, they pointed out that the credits could vary from handler to handler, by virtue of different points of origin, even though all the handlers may have delivered the surplus milk to the same distant plant. It was argued that under this circumstance the credits would result in Class III

prices that are not uniform among all handlers.

The pool credits adopted herein do not represent adjustments to the Class III price for the location of the receiving plant. Instead, such credits represent an additional mechanism in the order for maintaining a reasonable degree of equity among all producers whose milk is pooled and priced under the order. The authority for such a provision is section 808c(7)(D) of the Act, which provides that the order may contain terms and conditions incidental to, and not inconsistent with, other provisions of the Act is such terms and conditions are necessary to effectuate the other provisions of the order.

The proposal to begin the no-credit transportation zone at the boundary of the order area, rather than at the transferor plant, should not be adopted. ICMFA's witness proposed this modification but offered no evidence to support it. Accordingly, the proposal to begin the no-credit transportation zone at the boundary of the defined marketing area is denied.

The proposals to increase the no-credit transportation zone from 150 miles to 200 miles and to use the State Capitol at Lansing as the origination point should not be adopted. A handler proposed that the no-credit zone be increased to 200 miles and all distances to nonpool plants be measured from Lansing, Michigan. The spokesman for the handler said that the Secretary had used a no-credit zone of 250 miles in the 1982 temporary transportation credit amendments to the Louisville-Lexington-Evansville Federal milk order and had used Lexington and Louisville as measuring points. The spokesman said that the Secretary should use a similar basis for determining the no-credit zone for the Southern Michigan market.

The spokesman did not offer any persuasive evidence concerning a no-credit zone. In determining what this zone should be, it must be recognized that each milk market has its own local arrangements and normal marketing practices. For the Southern Michigan market, recognition is given to the distance that milk normally moves for surplus disposition from the Southern Michigan market. Accordingly, the proposal to increase the no-credit mileage zone or to use Lansing, Michigan, as the basing point is denied.

The proposals to add bulk fluid cream products to the products eligible for a transportation credit should not be adopted. No persuasive evidence was presented that showed the handling of excess cream is a particularly burdensome problem for the market. The handling of any excess butterfat is a

normal part of a handler's business operation. A handler may choose to operate a butter churn to utilize his excess butterfat or sell the butterfat to another handler. Other handlers may choose to purchase skim milk to balance their total milk needs. The proposal to include fluid cream products for any temporary or permanent transportation credit is denied.

Kraft, Inc., in a post-hearing brief, supported the concept that a transportation credit was appropriate to mitigate the disproportionate cost some handlers incur in disposing of surplus milk from the Southern Michigan market. Kraft, however, noted that ice cream is classified as a Class III product in the Southern Michigan order while it is typically classified as Class II in most Federal milk orders. Kraft's spokesman said the proposal might result in competitive inequities and in the displacement of milk supplies associated with other areas if transportation credits are allowed for milk or condensed milk used to produce ice cream.

Ice cream has been classified as a Class III product in the Southern Michigan order for many years. There was no evidence introduced at the hearing to support Kraft's assertion that the difference in the classification of ice cream might result in any competitive inequities between the Southern Michigan market and other Federal order markets, either distant or nearby.

One of the underlying purposes of the Act is to establish orderly marketing conditions for dairy farmers. The Act authorizes a number of specific means for achieving this, including the pooling of milk on a marketwide basis. Through this pooling procedure, all producers in the market share equitably in both the market's higher-valued fluid sales and the reserve milk supplies that necessarily must be available in the fluid market but which return only the lower manufacturing use value.

The pool credit adopted herein is a reasonable extension of this marketwide sharing concept. As already discussed, unusual supply-demand conditions are resulting in certain producers bearing a burdensome share of the costs of handling excess milk supplies associated with the fluid market. The temporary pool transportation credit represents a reasonable means of maintaining order market conditions for producers.

The order for the Southern Michigan market should specify that bulk fluid milk and condensed products must move more than 150 miles from the transferor plant before a transportation

credit would be allowed. This distance is sufficient to cover regular surplus milk and condensed dispositions from this market to outlets in northern Indiana and northwestern Ohio. Thus, no credit would be received for any milk or condensed products that moved 150 miles or less from the transferor plant. As proposed, no credit would be provided on any milk transferred to a plant located more than 150 miles from the transferor plant if any part of the milk were used as Class I products during the month.

2. Omission of a recommended decision and the opportunity to file exceptions thereto.

The evidence in the record of this proceeding strongly indicates that surplus milk supplies in the Southern Michigan milk market will be substantially larger than usual during May, June, July and August of this year. The amendment adopted herein is in response to these marketing conditions and is for the purpose of accommodating the handling of surplus milk under unusual circumstances. Unless amendatory action is taken on an emergency basis, the opportunity to assure producer equity in these markets will be lost. The normal procedure of issuing a recommended decision and providing time to file exceptions thereto will not permit the implementation of the amendment in time for it to serve the intended purpose.

It is therefore found that due and timely execution of the Secretary's function in this proceeding imperatively and unavoidably requires omission of the recommended decision and the opportunity for filing exceptions thereto.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan milk order was first issued and when it was amended. The previous findings and determinations are hereby

ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to Section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk and an Order amending the order regulating the handling of milk in the Southern Michigan marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision, except the attached marketing agreement,¹ be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

February 1983 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Southern Michigan marketing area is approved or favored by producers as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in

the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on April 29, 1983.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order² amending the order, regulating the handling of milk in the Southern Michigan marketing area.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon a proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held.

² This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

¹ Filed as part of the original document.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Southern Michigan marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. In § 1040.60, add paragraph (h) to read as follows:

§ 1040.60 Handler's value of milk for computing uniform price.

(h) With respect to milk marketed on or after the effective date hereof through August 1983, deduct the amount obtained by multiplying the pounds of bulk fluid milk and the pounds of condensed milk (whole or skim) which were classified as Class III and were transferred to another order plant pursuant to § 1040.42(b)(3) or to a nonpool plant pursuant to § 1040.42(d)(2), both of which are located outside the State of Michigan, by a per hundredweight rate equal to 3.6 cents for each 10 miles or fraction thereof that such other order plant or nonpool plant is located more than 150 miles, as determined by the market administrator, from the pool plant from which the milk was transferred. No credit shall apply to the total quantity of milk so transferred by a handler if any portion of the milk is assigned to Class I.

[FR Doc. 83-12093 Filed 5-5-83; 6:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily a pooling provision of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for May through August 1983 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due not later than May 13, 1983.

ADDRESS: Comments (two copies) should be filed with Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4824.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has also been determined that any need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the *Federal Register*. However, this would not permit the completion of the required procedures in time to give interested parties timely notice that the limit on allowable diversions of producer milk to nonpool manufacturing plants would be modified for May 1983. The initial request for the action was received on April 27, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of May through August 1983.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the *Federal*

Register. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include May 1983 in the temporary revision period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are the diversion limitation percentages as set forth in § 1065.13(d) that are applicable during the months of May through August 1983. The specific revision would increase the diversion limitation percentages 10 percentage points from the present 50 percent to 60 percent during each respective month.

Pursuant to the provisions of § 1065.13(d)(4), the diversion limitation percentages as set forth in § 1065.13(d) may be increased or decreased by up to 20 percentage points during any month to encourage additional needed milk shipments or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

National Farmers Organization, a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that the percentage of allowable diversions be increased 10 percentage points for the months of May through August 1983. The cooperative cites Class I utilization percentages of 34-36 percent for May through August 1982 and states that because of increasing producer receipts and decreased Class I disposition the percentage of producer milk needed to satisfy the fluid milk requirements of the market during the months of May through August 1983 will be somewhat less than the Class I percentages for last year. Without increased diversion limits, the cooperative states that it will be forced to deliver milk to a pool distributing plant and then pump it back out and deliver it to a manufacturing plant if the milk of its members regularly associated with the market is to remain a part of the marketwide pool.

Therefore, it may be appropriate to reduce the aforementioned pooling provisions for the months of May through August 1983 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 2, 1983.

Edward T. Coughlin,
Director, Dairy Division.

[FR Doc. 83-12191 Filed 5-5-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1099

Milk in the Paducah, Kentucky Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for May through August 1983 some of the diverted milk provisions of the Paducah Federal milk order. The action was requested by Associated Milk Producers, Inc., Southern Region, a cooperative association representing producers supplying milk to the market. The cooperative states that the suspension is needed to assure the continued association with the marketwide pool of producers who have historically served the market.

DATE: Comments are due on or before May 13, 1983.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It also has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the Federal Register. However, this would not permit the completion of the required suspension procedures and the inclusion of May 1983 in the suspension period if this is found necessary. The initial request for the action was received on April 27, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Paducah, Kentucky marketing area is being considered for May through August 1983:

In § 1099.13(c), paragraphs (2) and (3) in their entirety.

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include May 1983 in the suspension period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove the limits on the amount of milk that may be diverted from pool plants to nonpool plants during the months of May through August 1983. The order now provides that during each of those months, 33 percent of the milk received at a pool plant may be diverted to nonpool plants.

The suspension was requested by a cooperative association that supplies milk to a handler regulated by the order. The cooperative states that due to the relatively large increase in milk supplies for the market, it will be necessary to suspend the diversion provisions of the order for May through August 1983. Otherwise, producers who have regularly supplied the market will be prevented from sharing in the Class I sales of the market.

List of Subjects in 7 CFR Part 1099

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 2, 1983.

William T. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-12231 Filed 5-5-83; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Ch. XVIII

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Acquisition and Relocation for Federal and Federally Assisted Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of model regulations and request for comments.

SUMMARY: The Department of Transportation (DOT) at the request of the Office of Management and Budget (OMB), published in the Federal Register on April 14, 1983, 48 FR 16198, a notice of proposed rulemaking (NPRM) under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). This proposed DOT rule, developed by an interagency working group, is intended to eventually serve as a model for regulations to be issued by all other Federal agencies with programs covered by the Uniform Act. Those agencies will be requested by OMB to review their existing regulations and to revise them to be substantially identical to the final DOT regulations.

State and local agencies and individuals affected by programs of the Farmers Home Administration may wish to review and comment on the proposed regulation within the prescribed period. Appropriate DOT officials will be available to respond to any questions which may arise on this matter. To the extent possible, it is intended that all major issues be resolved through the DOT NPRM and that subsequent rules of this agency will adhere closely to the DOT model. Copies of comments sent to DOT may also be sent to the Farmers Home Administration.

DATE: Comments must be received by the Department of Transportation on or before May 31, 1983.

ADDRESSES: Send comments to Docket Clerk, OST Docket No. 79, Department of Transportation, 400 7th St., SW., Room 10241, Washington, D.C. 20590. Interested persons may also submit comments in duplicate to the Directives Management Branch, Farmers Home Administration, U.S. Department of

Agriculture, Room 6348, Washington, D.C. 20250, telephone (202) 382-9745.

FOR FURTHER INFORMATION CONTACT: Glendon D. Deal, Program Support Staff, Farmers Home Administration, U.S. Department of Agriculture, Room 6309, Washington, D.C. 20250, telephone (202) 382-9654.

Dated April 29, 1983.

Michael E. Brunner,
Acting Administrator, Farmers Home Administration.

[FR Doc. 83-12094 Filed 5-5-83; 8:45 am]
BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

NRC Requirements for Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule; Notice of meeting.

SUMMARY: The NRC will hold a meeting to discuss § 50.60, which deals with NRC requirements for anticipated transients without scram (ATWS). An ATWS occurs at a nuclear power plant if an abnormal operating condition that should cause the plant's reactor protection system to initiate a rapid shutdown (scram) of the reactor, fails to function. The primary purpose of this meeting is to exchange information on two aspects of possible NRC requirements for ATWS, which has been the subject of rulemaking since 1980.

DATE: May 19, 1983.

ADDRESS: The Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland 20014, Room 118.

FOR FURTHER INFORMATION CONTACT: David W. Pyatt, Office of Nuclear Regulatory Research, (301) 443-5960.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to exchange information on two aspects of possible NRC requirements for ATWS, which has been the subject of rulemaking since September, 1980. A final rule for ATWS requirements will be submitted to the Commission and to the ACRS within the next several months. The meeting will serve as a mechanism to address details of a reliability assurance program for the reactor trip system and the meaning of the word diversity as applied to certain of the possible requirements (see letter from M. L. Ernst to D. F. Knuth dated

April 28, 1983—available in the NRC's Public Document Room located at 1717 H Street, Washington, D.C.).

The meeting will be divided into a session for the NRC presentation and a session for licensee responses. The meeting will begin at 1:00 p.m. Members of the public are invited to attend and participate, to the extent practical.

Dated at Rockville, MD this 28th day of April, 1983.

For the Nuclear Regulatory Commission,
Malcolm L. Ernst,
*Acting Director, Division of Risk Analysis,
Office of Nuclear Regulatory Research.*

[FR Doc. 83-12090 Filed 5-5-83; 8:45 am]
BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 619

Loan Policies and Operations; Funding and Fiscal Affairs; Definitions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board, publishes for comment proposed amendments and new regulations concerning general loan policies and operations to allow loan participations among banks and associations of the Farm Credit System ("System"). These amendments and new regulations implement various provisions of the Farm Credit Act Amendments of 1980 (Pub. L. 96-592) ("1980 Amendments").

DATE: Written comments must be received on or before July 6, 1983.

ADDRESSES: Comments or suggestions should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20578. Copies of all correspondence will be available for inspection by interested persons in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Beltramo, Projects and Planning Division, (202) 755-6255, or Rose M. Ferguson, Bank Services Division, (202) 755-5943, Farm Credit Administration, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20578.

SUPPLEMENTARY INFORMATION:

Background

The 1980 Amendments authorize System banks and associations to participate loans among System

institutions operating under different titles of the Farm Credit Act of 1971, as amended ("1971 Act"), so long as the basic framework of the 1971 Act with respect to eligibility, term, membership, and other factors remains the same. A System task force established in 1981 identified the opportunities for loan participations made available by the 1980 Amendments in a detailed report issued in mid-1982. The FCA studied the report and promptly issued definitive guidelines setting forth the conditions for loan participations among Federal land banks ("FLBs") and production credit associations ("PCAs") noting that the complexity of issues relating to participations required additional examination before regulations could be promulgated. After further study of the report and the particular benefits and problems associated with loan participations, the FCA has developed regulations covering all aspects of loan participations among all System institutions operating under different titles of the 1971 Act. The previously issued guidelines governing loan participations among FLBs and PCAs remain effective until the issuance of final regulations.

Summary of Changes

The following discussion explains the proposed amendments and new regulations and gives the reasons therefor. In addition to changes relating to loan participations, technical, grammatical, and syntactical changes have been made to improve the regulations. These latter changes are not discussed, except where significant.

Section 614.4090

This section is amended to authorize FLBs to participate in loans with System institutions, Federal intermediate credit banks ("FICBs"), PCAs, banks for cooperatives ("BCs"), and other lenders which are not System institutions. FLB loan participations must follow the general requirements for System loan participations set forth in § 614.4330 and the specific requirements of § 614.4331.

Section 614.4100

This section is changed to authorize the FICBs to participate in loans with FLBs and BCs by following the general loan participation requirements of § 614.4330. The 1971 Act does not authorize FICBs to participate in loans to non-System financial institutions.

Section 614.4110

Amendments to this section permit PCAs to participate in loans with both System and non-System institutions.

Where the PCA originates the loan being participated, the PCA originates the loan being participated, the PCA must follow the requirements of § 614.4200. Other loan participations with PCAs must follow the general requirements of § 614.4330 and the specific requirements of § 614.4333.

Section 614.4120

This section is amended to reference that BC loan participations with System and non-System institutions must follow the general loan participation requirements of § 614.4330 and the specific requirements of § 614.4334. In addition, the term "eligible cooperative" has been changed to "voting stockholder" to be consistent with the 1971 Act.

Section 614.4180

This change references that the terms and conditions of FLB loan participations must comply with §§ 614.4330 and 614.4331.

Section 614.4190

This change references that the terms and conditions of FICB loan participation must comply with §§ 614.4330 and 614.4332.

Section 614.4230

This change references that security requirements for FLB loan participations must comply with §§ 614.4330 and 614.4331.

Section 614.4240

This section is amended to require that security requirements for FICB loan participations must follow § 614.4330.

Section 614.4330

This section is substantially revised to set forth the basic purposes for loan participations, the matters that must be covered in loan participation agreements, the portfolio limits on loan participations, and the bank policies necessary to implement a loan participation program. The 1980 Amendments require that loan participations with System institutions must follow eligibility, stock purchase, loan security, and other specified basic requirements of the institution originating the loan. This section reflects the 1980 Amendments by requiring System institutions originating loans being participated to follow their own lending requirements.

Section 614.4331

This section is substantially revised to set forth specific requirements and conditions in addition to § 614.4330 under which FLBs may participate loans

with System and non-System institutions. The amendment authorizes FLBs to participate in loans originated by non-System institutions in those cases where the farmer, rancher, or harvester or producer of aquatic products receives better financial terms than those available with a direct FLB loan.

Section 614.4332

This change references that FICBs may participate with System institutions in accordance with § 614.4330.

Section 614.4333

This section is amended to provide specific requirements and conditions in addition to § 614.4330 under which PCAs may participate loans with System and non-System institutions. As part of their overall supervision over the PCAs, FICBs are given specific supervisory responsibilities over PCA loan participations.

Section 614.4334

This section is amended to provide specific requirements and conditions in addition to § 614.4330 under which BCs may participate with System and non-System institutions. Only participation agreements between the Central Bank for Cooperatives and the district BCs shall be subject to FCA approval.

Section 614.4350

This section is amended to require inclusion of loan participations in calculation of lending limits of a System institution to a single borrower.

Section 614.4351

This section is amended to make clear that the total amount of funds, including loan participations, that an FLB may extend to a single borrower shall not exceed 20 percent of its capital and surplus.

Section 614.4352

This section is amended to allow an FICB to extend funds in participation with other System institutions, in addition to other FICBs and PCAs, to a single borrower up to 20 percent of its capital and surplus.

Section 614.4353

This section is amended to make clear that in the absence of an FCA-approved loss-sharing agreement, the total amount of funds, including loan participations, that a PCA may extend to a single borrower shall not exceed 50 percent of the PCA's capital and surplus.

Section 614.4354

The BC lending limits to a single borrower shall not change due to

additional authority to participate loans with other System institutions. The regulation is amended to reflect this.

Section 614.4510

Loan servicing requirements are revised to reference the new § 614.4330 requirements for servicing of loans that are participated. In addition, loan participation agreements between System institutions may, to the extent permitted by § 614.4330, assign certain loan servicing functions to the participating institution.

Section 615.5050

The FLB carrying value requirements for collateral of Systemwide bonds are amended to apply to loan participations only where the loan is originated by an FLB or a non-System financial institution.

Section 615.5060

A subsection is added to the special collateral requirements to allow FLBs to use participation agreements covering loans originated by other System institutions to meet the collateral requirements of § 615.5050.

Section 619.9135

This new regulation defines System institutions.

Section 619.9195

This new regulation defines loan participants.

List of Subjects in 12 CFR Parts 614, 615, and 619

Accounting, Agriculture, Banks, Banking, Credit, Government securities, Investments, Rural areas.

For the reasons set out in the preamble, Parts 614, 615, and 619 of Chapter VI, Title 12 of the Code of Federal Regulations are amended as shown.

PART 614—LOAN POLICIES AND OPERATIONS

Subpart C—Lending Authorities

1. Section 614.4090 is revised to read as follows:

§ 614.4090 Federal land banks.

The banks are authorized to make long-term real estate mortgage loans in rural areas as specified by the Farm Credit Administration, or to producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years. Federal land banks may participate in loans with Farm Credit System institutions and other lenders which are not Farm Credit System

institutions as set forth in §§ 614.4330 and 614.4331. Subject to limitations applicable to making long-term real estate mortgage loans, the banks are authorized to make continuing commitments to make loans and to extend financial assistance of a similar nature. Policies as prescribed by the bank's board shall be followed in making loans, in continuing commitments for loans, and in extending other financial assistance. Borrowers shall be permitted to make advance payments on their loans or, under agreement with the banks, to make advance conditional payments to be applied to future maturities or to be available for return to the borrowers for purposes for which the bank would increase their existing loans. Banks may pay interest or advance conditionally payments for the time the funds are held unapplied at a rate not to exceed the rate charged on the related loan(s).

2. Section 614.4100 is amended by revising paragraph (a) to read as follows:

§ 614.4100 Federal intermediate credit banks.

(a) The banks are authorized to make loans and extend other similar financial assistance to, and to discount for or purchase from, production credit association, with their endorsement or guaranty, any note, draft, and other obligation presented by such association. In addition, the banks may participate in loans with other Farm Credit System institutions, as set forth in §§ 614.4330 and 614.4332.

3. Section 614.4110 is revised to read as follows:

§ 614.4110 Production credit associations.

Each production credit association, under policies established by the bank board and procedures prescribed by the bank, may make, guarantee, or participate with other Farm Credit System institutions or other lenders that are not Farm Credit System institutions in short- and intermediate-term loans and other similar financial assistance to eligible borrowers. Short- and intermediate-term loans may be made for a term not exceeding 7 years, or such longer periods, not to exceed 10 years as provided in § 614.4200. Loans to eligible producers or harvesters of aquatic products for the purposes enumerated in § 614.4200(d) may be for a term not exceeding 15 years. In addition, production credit associations may participate in loans with other Farm Credit System institutions or with other lenders that are not Farm Credit System

institutions as set forth in §§ 614.4330 and 614.4331.

4. Section 614.4120 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 614.4120 Banks for cooperatives.

(a) The banks are authorized to make loans and commitments to eligible cooperatives and to extend to them other financial assistance, including, but not limited to, discounting notes and other obligations, guarantees, and collateral custody, or the banks may participate with other financial institutions in loans to eligible cooperatives. The banks are authorized to make or participate in loans, commitments, and extend other technical and financial assistance to a domestic or foreign party with respect to its transactions with a voting stockholder of the bank and to a domestic or foreign party in which such stockholder has at least a minimum ownership interest for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales, or exchanges. The voting stockholder must substantially benefit as a result of such loan, commitment, or assistance for the purpose of facilitating the cooperative's export or import operations. This type of activity shall be made under policies determined by the bank's board of directors and approved by the Farm Credit Administration.

(c) Loan participations, as authorized in this section, shall be made as set forth in §§ 614.4330 and 614.4334.

Subpart E—Loan Terms and Conditions

5. Section 614.4180 is amended by revising paragraph (a) to read as follows:

§ 614.4180 Federal land banks.

(a) Loans may be made for not less than 5 years nor more than 40 years. The basis of approval shall set out the terms and conditions under which a loan is approved. When necessary to assure proper understanding, provide needed controls, and protect the lender, a formal written loan agreement shall be developed between the borrower and the bank. In addition, the banks may participate in loans with other lenders as set forth in §§ 614.4330 and 614.4331.

6. Section 614.4190 is amended by revising paragraph (a) to read as follows:

§ 614.4190 Federal intermediate credit banks.

(a) Loan participations between Federal intermediate credit banks and production credit associations shall be made under the same terms and conditions prescribed in § 614.4200 for production credit associations. Loan participations with Federal land banks and banks for cooperatives and other Federal intermediate credit banks shall be made as set forth in §§ 614.4430 and 614.4332.

Subpart F—Security Requirements

7. Section 614.4230 is amended by revising paragraphs (a) and (c) and by adding a new paragraph (d) to read as follows:

§ 614.4230 Federal land banks.

(a) Primary security for a Federal land bank loan shall consist of a first lien on an interest in real estate comprising agricultural property, an eligible farm-related business, an eligible rural residence, or real estate used as an integral part of an eligible aquatic operation, whichever is most appropriate for the type of loan being made. The real estate interest must be mortgageable under deeds or leases which reasonably may be considered adequate to allow the bank to have the security of a first lien upon such interest. Collateral closely aligned with, an integral part of, and normally sold with real estate may be included in the appraised value of the primary security upon which a loan is based. Values shall be determined according to the appraisal standards approved by the bank.

(c) Personal property used in farming or aquatic operations and considered as collateral for short- and intermediate-term credit will normally not be included as additional security. Before taking such personal property as additional security, the Federal land bank and Federal land bank associations shall consider whether all or a portion of the credit needs might be met more satisfactorily by a short- or intermediate-term loan such as may be obtained through a production credit association in accordance with district board policies established under § 616.6020.

(d) Security requirements for loan participations shall be as set forth in §§ 614.4330 and 614.4331.

8. Section 614.4240 is amended by revising paragraph (a) to read as follows:

§ 614.4240 Federal intermediate credit banks.

(a) Participation loans. Loans made by a Federal intermediate credit bank in participation with a production credit association or another Federal intermediate credit bank shall adhere to the same security requirements as prescribed in § 614.4250 for production credit association. Security requirements for loan participations with Federal land banks or banks for cooperatives shall be as set forth in § 614.4330.

Subpart H—Loan Participations

9. Section 614.4330 is revised to read as follows:

§ 614.4330 General.

(a) Under policies approved by the boards of directors of the respective banks and the Farm Credit Administration, Farm Credit System banks and production credit associations may enter into loan participation agreements, as set forth in this Subpart H, to enable joint financing of individuals or legal entities authorized by the Act and the FCA Regulations to borrow from Farm Credit System institutions. Loan participation arrangements shall accomplish one or more of the following objectives:

- (1) Facilitate the sharing of credit expertise on specific loans;
 - (2) Provide servicing arrangements that are advantageous to Farm Credit System institutions in accommodating borrowers having special needs;
 - (3) Prudently meet the financing needs of larger borrowers; and
 - (4) Generally improve the quality of credit service to the agricultural sector.
- Loan participation arrangements between Farm Credit System institutions shall be consistent with the purposes for which each institution was established and shall not operate to circumvent the operations or financial requirement of any Farm Credit System institution.

(b) Loan participation agreements shall define the duties and responsibilities of both the originating institution and participating institution(s) consistent with the aforementioned objectives and sound business practices. At a minimum, loan participation agreements shall:

- (1) Identify the particular loan or loans to be covered by the agreement;
- (2) Provide for disbursement and repayment of loan funds;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Provide a loan service plan;

(5) Provide collection procedures;

(6) Set forth authorization and conditions for action in the event of borrower distress or default;

(7) Provide for loss sharing;

(8) Set forth conditions for acceptance and termination of the agreement;

(9) Provide for capitalization requirements between participating institutions; and

(10) Provide for arbitration of controversies or disagreements between Farm Credit System institutions arising under the agreement.

In addition, participation agreements shall contain any other terms necessary for the appropriate administration of the loan and the protection of the interests of Farm Credit System institutions. Each participating bank or association shall analyze each loan independently. Any Farm Credit System institution shall have the option to accept or reject a loan participation. Participating institutions, except in the case of two or more banks for cooperatives, shall be issued certificates evidencing part of an undivided interest in the loan. The amount of any loan retained or purchased by an individual Farm Credit bank or association shall be subject to any prior approval requirement for that bank or association and shall be in accordance with the lending limits of Part 614, Subpart J, of the FCA Regulations.

(c) In addition to the requirements of paragraphs (a) and (b), loan participations between Farm Credit institutions shall meet the following criteria:

(1) Borrowers eligibility, membership, loan term, loan amount, loan security, and the requirement for the purchase of stock or participation certificates by the borrower shall be in accordance with the statutory and regulatory provisions under which the institution that originates the loan operates.

(2) All other terms shall be by agreement of the institutions consistent with the intent of these regulations for loan participations between Farm Credit System institutions. All terms agreed upon shall be consistent with the Act, FCA Regulations, and bylaws applicable to the respective institutions.

(3) Banks originating loan participations and desiring to utilize differential interest rates to the borrower shall submit differential interest rate policies to the Farm Credit Administration in accordance with § 614.4280. Production credit associations originating loan

participations shall obtain approvals for the use of differential interest rates to the borrower from the supervising Federal intermediate credit bank.

(4) No Farm Credit System bank or association, other than the Central Bank for Cooperatives, shall have loan participations which have been purchased from other Farm Credit System banks or associations in excess of 15 percent of its total loan value.

(5) District boards desiring to implement a loan participation program shall effect such policy approvals and modify existing policies as necessary. These policies shall be submitted to the Farm Credit Administration for approval prior to implementation of the program in the district. These policies shall address:

(i) The basis under which district banks may enter into interdistrict bank and association participations or intradistrict participations.

(ii) Capitalization guidelines with respect to the portion of loans purchased.

(iii) Criteria regarding the quality of loans that one Farm Credit System institution may purchase from another Farm Credit System institution.

(iv) Identification and reporting of loans which are participated.

(v) Credit, financial, and administrative reviews of loans which are participated.

(vi) Any limitations or conditions to the district program that the board deems appropriate.

10. Section 614.4331 is revised to read as follows:

§ 614.4331 Federal land banks.

(a) The banks may enter into loan participation agreements with one or more other Federal land banks under terms established by the participating banks. Federal land banks may enter into loan participation agreements with one or more Federal intermediate credit banks, production credit associations, and banks for cooperatives, as set forth in § 614.4330. Federal land banks may also participate, in accordance with § 614.4330, with lenders that are not Farm Credit System institutions in loans that Federal land banks are authorized to make under the Act and FCA Regulations.

(b) Federal land banks may enter into loan participations with lenders which are not Farm Credit System institutions where the loan participation results in loan terms to the borrower which could not be obtained from a direct Federal land bank loan.

(c) A Federal land bank shall only enter into loan participation agreements

with production credit associations and lenders that are not Farm Credit System institutions on loans financing operations located wholly within the Federal land bank's chartered territory, or outside the Federal land bank's chartered territory in accordance with § 614.4070.

(d) In addition to the provisions contained in § 614.4330, participation agreements between Federal land banks and commercial banks or other lenders which are not Farm Credit System institutions shall be subject to the following limitations.

(1) To assure that such participation agreement does not result in a commercial bank's substantially shifting its lending away from agriculture, the participating commercial bank shall fulfill one of the following:

(i) Retain at least 50 percent of the total of each participated loan; or
(ii) Retain at least 10 percent of the total of each participated loan provided that the commercial bank does not materially reduce its ratio of agricultural loans to total loans from the ratio maintained during the preceding 3 years; or

(iii) Retain the maximum amount of the participated loan permitted by banking regulations to which the bank is subject.

(2) A lender other than a commercial bank shall provide evidence of financial responsibility and capability to service and control loans being made as a prerequisite to bank approval of a loan participation agreement.

11. Section 614.4332 is revised to read as follows:

§ 614.4332 Federal intermediate credit banks.

The banks may enter into loan participation agreements with one or more other Federal intermediate credit banks or with production credit associations under terms established by participating institutions. Federal intermediate credit banks may enter into loan participation agreements with one or more Federal land banks or banks for cooperatives as set forth § 614.4330.

12. Section 614.4333 is revised to read as follows:

§ 614.4333 Production credit associations.

(a) The associations may enter into participation agreements with one or more other production credit associations, Federal intermediate credit banks, Federal land banks, banks for cooperatives, commercial banks, or other lenders. All such agreements shall be subject to the prior approval of the supervising Federal intermediate credit bank and shall be in accordance with

§ 614.4330. When the production credit association is the participant, the Federal intermediate credit bank shall evaluate, in addition to the overall terms of the proposed loan participation, the adequacy of the association's risk funds, the capability of the association to administer the loan properly in accordance with the loan participation agreement, and any other factors relating to the ability of the production credit association to carry out the terms of the agreement within the intent of § 614.4330.

(b) A production credit association shall only enter into loan participation agreements with lenders other than production credit associations on loans financing operations located wholly within its chartered territory, or outside its chartered territory in accordance with § 614.4070.

(c) In addition to the provisions contained in § 614.4330, participation agreements between production credit associations and commercial banks or other lenders which are not Farm Credit System institutions shall be subject to the following limitations.

(1) To assure that such a participation agreement does not result in a commercial bank's substantially shifting its lending away from agriculture, the participating commercial bank shall fulfill one of the following:

(i) Retain at least 50 percent of the total of each participated loan; or
(ii) Retain at least 10 percent of the total of each participated loan provided that the commercial bank does not materially reduce its ratio of agricultural loans to total loans from the ratio maintained during the preceding 3 years; or

(iii) Retain the maximum amount of the participated loan permitted by banking regulations to which the bank is subject.

(2) A lender other than a commercial bank shall provide evidence of financial responsibility and capability to service and control loans being made as a prerequisite to bank approval of a loan participation agreement.

13. Section 614.4334 is revised to read as follows:

§ 614.4334 Bank for cooperatives.

A district bank for cooperatives shall first offer to the Central Bank for Cooperatives a participation in loans to a borrower when such loans exceed the lending limit of the bank. With the concurrence of the Central Bank, participations in loans in excess of a bank's lending limit may be offered initially to other district banks for cooperatives, Federal land banks, Federal intermediate credit banks,

production credit associations, commercial banks, or other financial institutions. A bank for cooperatives may offer a participation to other district banks for cooperatives, Federal land banks, Federal intermediate credit banks, or production credit associations in loans which are less than its lending limit; however, when total loans, to such borrowers exceed the lending limit of the originating bank for cooperatives, further loans must be offered first to the Central Bank for Cooperatives. Loans in excess of the lending limit established by the Farm Credit Administration for banks for cooperatives on a consolidated basis may be made only when such excess amounts are sold as participations to commercial banks, or other financial institutions that are not Farm Credit System institutions. The form and terms of each participation agreement between the Central Bank for Cooperatives and a district bank for cooperatives shall be subject to Farm Credit Administration approval. In addition, supplemental agreements and modifications to existing agreements which directly affect capitalization, interest, and other items identified by the Farm Credit Administration shall be subject to Farm Credit Administration approval. Pro rata loss-sharing arrangements which extend loan risk beyond established lending limits shall also require Farm Credit Administration approval. The names of participants, amounts, and dates shall not require approval.

Subpart J—Lending Limits

14. Section § 614.4350 is revised to read as follows:

§ 614.4350 General.

No Farm Credit System bank or association shall make a loan, advance, commitment, or provide financial assistance which will result in any one borrower being obligated to such bank or association in excess of limits stated in this Subpart J. When these limitations are approached, banks or associations should consider the feasibility of arranging participation in large loans with other banks or associations to properly serve the credit needs of deserving large credit worthy borrowers. Included in the calculation of lending limits to any one borrower shall be the amount of any participation in a loan(s) to that borrower purchased by the Farm Credit System bank or association.

15. Section 614.4351 is revised to read as follows:

§ 614.4351 Federal land banks.

The total amount of loans, advances, commitments, financial assistance, and funds through the purchase of loan participation(s) that a Federal land bank may extend to any one borrower shall not exceed 20 percent of the capital and surplus of the bank.

16. Section 614.4352 is revised to read as follows:

§ 614.4352 Federal intermediate credit banks.

The total amount of funds that a Federal intermediate credit bank may extend in participation with a production credit association, another Federal intermediate credit bank, a Federal land bank, or a bank for cooperatives, to any one borrower shall not exceed 20 percent of its capital and surplus.

17. Section 614.4353 is revised to read as follows:

§ 614.4353 Production credit associations.

The total amount of loans, advances, commitments, financial assistance, and funds through the purchase of a loan participation(s) that an association may extend to any one borrower shall not exceed 50 percent of the capital and surplus of the association. A lending limit of 100 percent of the capital and surplus of the association shall apply whenever and approved loss-sharing agreement is in force.

18. Section 614.4354 is amended by revising paragraphs (b), (c)(1) and (c)(2) to read as follows:

§ 614.4354 Banks for cooperatives.

(b) Total system. Loans outstanding at any one time to any one borrower from one or more district banks and the Central Bank for Cooperatives, exclusive of participations sold to lenders that are not farm credit system institutions, shall not exceed the percentages specified in paragraph (a)(1) applied to the combined net worth of the 13 banks for cooperatives and determined by the Farm Credit Administration. Loans made within previously established limits that become excessive because of changes in lending limits prescribed herein may be held and liquidated in accordance with terms individually specified by the Farm Credit Administration.

(c) * * *

(1) Direct loans outstanding at any one time to any one borrower as defined by these regulations, exclusive of participations sold to others, shall not exceed the same lending limit percentages prescribed in paragraph (a)(1) for district banks.

(2) Participations in loans at any one time to any one borrower as defined by these regulations, exclusive of participations resold to institutions other than Farm Credit System institutions, shall not exceed amounts greater than the lending limit described in paragraph (b) less amounts held by Farm Credit System institutions.

Subpart N—Loan Service Requirements

19. Section 614.4510 is amended by revising the introductory paragraph and paragraphs (b), (c), and the introductory text of paragraph (d) to read as follows:

§ 614.4510 General.

The banks and associations that are originating lenders shall be responsible for the servicing of the loans which they make. However, loan participation agreements may designate specific loan servicing effort to be accomplished by a participating institution. The banks' boards of directors shall direct the banks and associations to adopt loan servicing policies and procedures to assure that loans will be serviced fairly and equitably for the borrower while minimizing the risk for the banks and associations. Procedures shall include specific plans which help preserve the quality of sound loans and which help correct credit deficiencies as they develop.

(b) The supervisory Federal intermediate credit bank shall provide guidelines for the production credit associations to use in establishing their loan servicing policies and procedures plus any limitations requiring the approval of the bank. Bank policies shall govern the servicing of loan participations with a production credit association.

(c) The servicing of loans which are participated in by Farm Credit System institutions shall be in accordance with § 614.4330.

(d) In the development of the bank and association loan servicing policies and procedures, the following criteria shall be included:

PART 615—FUNDING AND FISCAL AFFAIRS**Subpart B—Collateral**

20. Section 615.5050 is amended by revising paragraph (d) to read as follows:

§ 615.5050 Policy.

(d) When there is loan servicing, such as reamortization, extension, deferment, or partial release, the new unpaid balance may be used as the collateral carrying value. In loans originated by a Federal land bank or in which it participates with a lender which is not a Farm Credit System institution, the carrying value shall not exceed 85 percent (97 percent if guaranteed by Federal, State, or other governmental agencies) of the appraised value established by the most recent appraisal report of the primary security.

21. Section 615.5060 is amended by adding a new paragraph (c) to read as follows:

§ 615.5060 Special collateral requirement—Federal land banks.

(c) A loan participation agreement with a Federal land bank involving a loan originated by a Farm Credit System institution, other than a Federal land bank, shall constitute an obligation meeting the collateral requirements of § 615.5050(a).

PART 619—DEFINITIONS

22. CFR, Part 619 is amended by adding § 619.9135 to read as follows:

§ 619.9135 Farm Credit System institutions.

All institutions chartered and supervised by the Farm Credit Administration, including the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and service organizations chartered under Title IV, Part D, of the act.

23. 12 CFR, Part 619 is amended by adding § 619.9155 to read as follows:

§ 619.9155 Loan participation.

A loan having two or more banks or associations as lenders. The originating bank or association makes the loan and sells part of an undivided interest in the loan to one or more banks or associations pursuant to a participation agreement.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252))

Donald E. Wilkinson,
Governor, Farm Credit Administration.

[FR Doc. 83-12155 Filed 5-5-83; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket No. 30324-45]

Commerce and Foreign Trade; Special Services and Studies by the Bureau of the Census; Proposed Changes

AGENCY: Bureau of the Census, Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce is authorized to conduct special statistical surveys and studies and to perform other specified services upon payment of the cost thereof. The Bureau of the Census proposes to amend the regulation to remove those special services and studies that are no longer available, to revise the cost of conducting a preliminary investigation and for providing the final report for foreign trade and shipping statistics, and to delete references to unpublished data from the 1960 Population and Housing Census.

DATE: Comments on the proposed rule must be received by June 6, 1983.

ADDRESS: Send all comments to the Program and Policy Development Office, Room 2419, Federal Building 3, Bureau of the Census, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: Sherry Courtland, Program and Policy Development Office, Room 2419, Federal Building 3, Bureau of the Census, Washington, D.C. 20233, (301) 763-2758.

SUPPLEMENTARY INFORMATION: The Bureau of the Census announced the review of 15 CFR Part 50, Special Services and Studies by the Census Bureau, in the Department of Commerce's Semi-Annual Agenda of Regulations, published on October 28, 1982, at 47 FR 48314. Based on the review, it was determined that various services under Part 50 were no longer available from the Census Bureau. The purpose of this proposed rule is to eliminate those services that are no longer available and to revise the fee, where appropriate, for services that are still available.

The Director, Bureau of the Census, has determined that this is not a "major rule" under the requirements of Executive Order 12291. It will not have an annual effect on the economy of \$100 million or more and will not, if promulgated, have a significant economic effect on a substantial number of small entities, pursuant to the Regulatory Flexibility Act.

The provisions of this Part 50 are issued under 15 U.S.C. 1526 and 13 U.S.C. 8.

List of Subjects in 15 CFR Part 50

Special census services and studies, Statistical and personal census data.

PART 50—[AMENDED]

Based on the review of 15 CFR Part 50 and the reasons set out in the preamble, it is proposed to amend 15 CFR Part 50 as follows:

1. *Section 50.1—General.* This section would be amended to remove references in "(a)," to unpublished data from the 1969 Population and Housing Census, enumeration district maps, and housing data from the 1960 Census of Housing. Section 50.1 would be amended by revising paragraph (a) to read:

§ 50.1 General.

(a) Fee structure for age search and citizenship service, special population census, and for foreign trade and shipping statistics.

§ 50.15 [Removed]

2. *Section 50.15 Fee structure for unpublished data from the 1960 Population and Housing Census.* This section would be removed. There is no fee structure for these unpublished decennial census data since this service is no longer required. The information is available in standard Bureau products that may be purchased through the Government Printing Office (GPO).

§ 50.20 [Removed]

3. *Section 50.20—Fee structure for enumeration district maps.* This section would be removed. This service is no longer available. Census Bureau maps are sold as a standard data product and may be purchased through the Data User Services Division. Maps that are part of a publication package may be purchased through GPO.

§ 50.25 [Removed]

4. *Section 50.25—Fee structure for housing data from the 1960 Census of Housing.* This section would be removed. General data on housing characteristics and plumbing facilities are part of the basis decennial census tabulations that may be purchased.

§ 50.30 [Amended]

5. *Section 50.30—Fee structure for foreign trade and shipping statistics.* In paragraph "(b)," the fee for a preliminary investigation "\$125" would be changed to read "\$250". The total cost of the final report should be changed from "\$200 to several thousand dollars" to "\$500 to several thousand dollars."

§ 50.35 [Removed]

6. *Section 50.35—Fee structure for seasonal adjustments of time series.* This section would be removed. The service is no longer provided by the Bureau.

Dated: March 24, 1983.

Bruce Chapman,
Director, Bureau of the Census.

M. Kendall Fleebarty,
Assistant General Counsel for Regulation,
U.S. Department of Commerce.

[FR Doc. 83-12134 Filed 5-6-83; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-185 (New Mexico-21)]

New Mexico; High-Cost Gas Produced From Tight Formations; Notice of Amendment

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of amendment.

SUMMARY: This notice amends the area described in the Notice of Proposed Rulemaking issued by the Director of the Office of Pipeline and Producer Regulation, containing the recommendation of the State of New Mexico that the Abo Formation be designated as a tight formation under § 271.703(d).

DATE: Comments are due May 13, 1983.

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

FOR FURTHER INFORMATION CONTACT: Randall S. Rich, (202) 357-5447

or
Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

In the matter of High-Cost Gas Produced From Tight Formations; Docket No. RM79-76-185 (New Mexico-21); Nunc Pro Tunc Amendment of Jurisdictional Agency Determination.

Issued: May 2, 1983.

On April 14, 1983, the State of New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) filed with the Federal Energy Regulatory Commission (Commission) a *Nunc Pro Tunc* Order which had been issued April 5, 1983, to correct the description of the Abo Formation located in San Miguel.

Torrance, Guadalupe, DeBaca, Lincoln and Chaves Counties, New Mexico. In accordance with New Mexico's recommendation, filed with the Commission on January 23, 1983, the Director, Office of Pipeline and Producer Regulation issued a Notice of Proposed Rulemaking in Docket No. RM79-76-185 (New Mexico-21) on February 28, 1983, 48 FR 9291 (March 4, 1983), including the description of the proposed tight formation as originally filed by New Mexico.

The correct delineation of the formation described in § 271.703(d) (168) (i) should include areas in Chaves County: Townships 6 through 1 South, Range 21 East, Township 12 South, Range 21 and 21½ East, and Township 13 South, Range 21 East.

Any interested persons may comment on the proposed rulemaking, as corrected in this notice by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Washington, D.C. 20426 on or before May 13, 1983.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-12234 Filed 5-5-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 83N-0010]

Butter and Whey Butter; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard of Identity

Correction

In FR Doc. 83-4197, beginning on page 7200, in the issue of Friday, February 18, 1983, on page 7201, in the third column, in paragraph's 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5, "pE" should read "pH".

BILLING CODE 1505-01-M

21 CFR Parts 610 and 660

[Docket No. 82N-0358]

General Biological Products Standards—Sterility; Additional Standards for Diagnostic Substances for Laboratory Tests—Amendment of Final Container Requirements for Certain In Vitro Diagnostic Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the requirements concerning the sterility, transparency, and color of final containers used in packaging certain hepatitis in vitro diagnostic products. FDA is proposing that the Director, Office of Biologics, be authorized to exempt certain final containers from the sterility requirement and require instead that the contents of the final container meet certain microbial load specifications. FDA also is proposing that the requirements that the final container be both colorless and transparent be replaced with a requirement that such containers be sufficiently transparent to permit visual inspection of the contents. The proposal, if adopted, would reduce manufacturing costs and allow use of plastic containers.

DATES: Comments by July 5, 1983. FDA is proposing that the effective date of the final rule be 30 days after the date of its publication in the Federal Register.

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:

Joseph Wilczek, National Center for Drugs and Biologics (HFN-813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION:

Antibody to Hepatitis B Surface Antigen and Hepatitis B Surface Antigen are in vitro diagnostic products used for the detection of antibody to hepatitis B surface antigen or hepatitis B surface antigen in blood and blood products. Under section 351 of the Public Health Service Act (42 U.S.C. 282), biological products, including hepatitis in vitro diagnostic products, offered for sale in interstate commerce are required to be licensed and meet certain standards that ensure that continued safety, purity, potency, and efficacy. Section 610.12 of the general biologics regulations (21 CFR 610.12) requires that each lot of each biological product be sterile and that sterility be demonstrated by testing the contents of both bulk and final containers. In addition, § 660.2(d) concerning Antibody to Hepatitis B Surface Antigen and § 660.41(c) concerning Hepatitis B Surface Antigen (21 CFR 660.2(d) and 660.41(c)) require that the final container for these products be sterile, colorless, and transparent.

A manufacturer has requested that the

agency amend the sterility test requirements of § 610.12 and the final container requirements of §§ 660.2(d) and 660.41(c) to allow the manufacture of final containers of hepatitis in vitro diagnostic products which are not absolutely sterile, because absolute sterility is unnecessary. The manufacturer stated that the in vitro products contain preservatives, such as sodium azide or thimerosal, to prevent the growth of microorganisms and that the safety and effectiveness of these products that are intended for use in the clinical laboratory would be assured with less stringent means of product control, such as microbial load specifications, rather than sterility of the final container.

To establish the least burdensome means of accomplishing agency regulatory objectives, the agency proposes to amend the sterility requirements of § 610.12 for in vitro diagnostics to allow for alternatives to sterility of contents of a final container for certain in vitro diagnostics when scientific evidence supports such a change and the change is approved by the Director, Office of Biologics. To ensure satisfactory product performance, the agency proposes to amend §§ 660.2(d) and 660.41(c) to require that the effectiveness of the contents of a final container of hepatitis in vitro diagnostics be maintained throughout the dating period, regardless of whether or not the contents of the final containers are sterile.

The agency is also aware that plastic containers are being used as an alternative to glass containers. The agency has no objection to use of such containers, provided that the containers are sufficiently transparent to permit observation of the contents. To allow for use of plastic containers, the agency proposes to amend §§ 660.2(d) and 660.41(c) by removing the words "colorless and transparent" and substituting the phrase "sufficiently transparent to permit visual inspection of the contents for presence of particulate matter and increased turbidity".

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order

12291 and the Regulatory Flexibility Act, the agency has considered the impact of the proposed regulations. FDA believes that the proposal will relieve a burden on manufacturers of certain in vitro diagnostic products by allowing more flexibility concerning final container requirements. There are currently 4 manufacturers of Hepatitis B Surface Antigen and 7 manufacturers of Antibody to Hepatitis B Surface Antigen. The proposed rule is expected to have a favorable economic impact on these establishments. Therefore, the agency concludes that the proposed regulations do not warrant designation as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. The agency certifies that a regulatory flexibility analysis is not required because the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects 21 CFR Parts 610 and 660

Biologics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040-1042 as amended, 1050-1051 as amended, 1055-1056 as amended (21 U.S.C. 321, 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 610 and 660 be amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. In Part 610 by revising § 610.12(g)(4), to read as follows:

§ 610.12 Sterility.

(g) * * *

(4) *Test precluded or not required.* (i) The tests prescribed in this section need not be performed for whole Blood (Human), Cryoprecipitated Antihemophilic Factor (Human), Platelet Concentrate (Human), Leukocyte Typing Serum, Red Blood Cells (Human), Single Donor Plasma (Human), Source Plasma (Human), Smallpox Vaccine, or Reagent Red Blood Cells.

(ii) Where a manufacturer submits data which the Director, Office of Biologics, finds adequate to establish that the mode of administration, the method of preparation, or the special nature of the product precludes or does not require a sterility test or that the sterility of the lot

is not necessary to assure the safety, purity and potency of the product, the Director may exempt a product from the sterility requirements of this section subject to any conditions necessary to assure the safety, purity, and potency of the product.

PART 600—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

2. In Part 600:

a. By revising § 600.2(d), to read as follows:

§ 600.2 General requirements.

(d) *Final container.* A final container shall be sufficiently transparent to permit visual inspection of the contents for presence of particulate matter and increased turbidity. The effectiveness of the contents of a final container shall be maintained throughout its dating period.

b. By revising § 600.41(c), to read as follows:

§ 600.41 Processing.

(c) *Final container.* A final container shall be sufficiently transparent to permit visual inspection of the contents for presence of particulate matter and increased turbidity. The effectiveness of the contents of a final container shall be maintained throughout its dating period.

Interested persons may, on or before July 5, 1983, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 25, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11978 Filed 5-5-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-2]

Virgin Islands State Plan: Notice of Eligibility for Final Approval Determination; Notice of Comment Period; Notice of Informal Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for written comments.

SUMMARY: This document gives notice that the Virgin Islands State plan is eligible for a determination under Section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the plan should be granted. If an affirmative determination under Section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the Virgin Islands plan. This notice also announces that OSHA is soliciting public comment and has scheduled an informal public hearing in the Virgin Islands to allow interested persons to present their views regarding whether or not final approval should be granted.

DATES: Written comments must be received by June 15, 1983. Notices of intention to appear at the informal public hearing, testimony which exceeds 15 minutes, and all evidence which will be introduced into the hearing record must also be received by June 15, 1983.

The hearing will begin at 9:30 a.m. on June 29, 1983.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T-2, Room S6212, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 523-7894.

Notices of intention to appear at the hearings, testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3635, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The hearing will be held at the following location: Federal Building, U.S. Courthouse, Room 110, Veteran's Drive, Number 26, St. Thomas, Virgin Islands.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer

Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective as" Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by Section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been met. 29 CFR 1902.34.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.37 are being applied. An affirmative determination under Section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the withdrawal of Federal standards authority and enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e). Procedures for 18(e) determinations are found at 29 CFR Part 1902, Subpart D.

History of the Virgin Islands Plan

On November 28, 1972, the Virgin

Islands submitted an occupational safety and health plan in accordance with these procedures, and on March 20, 1973, a notice was published in the Federal Register (38 FR 7369) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan.

On September 11, 1973, the Assistant Secretary published a notice granting initial approval of the Virgin Islands plan as a developmental plan under Section 18(b) of the Act (38 FR 24896). (Section 3(7) of the Act includes the Virgin Islands among the jurisdictions eligible for a "State" plan. In accordance with this designation, the occupational safety and health program of the Territory of the Virgin Islands is hereafter referred to as a State plan.) The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Virgin Islands Department of Labor is designated as having responsibility for administering the plan throughout the State. The plan provides for the adoption of Federal occupational safety and health standards by the Virgin Islands. The plan requires employers to furnish employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. The plan contains provisions similar to Federal procedures for emergency temporary standards; imminent danger proceedings; variances; safeguards to protect trade secrets; and employer and employee rights to participate in inspection and review proceedings.

The notice of initial approval noted a few important distinctions between the Federal and Virgin Islands program. The State plan does not include coverage of occupational health except in the public sector nor does the Virgin Islands plan cover safety and health in private sector maritime employment. Unlike the Federal Act, citations and penalties under the Virgin Islands plan are reviewed by the agency with overall responsibility for administering the plan rather than by an independent agency. However, these agency decisions are subject to review by the District Court. Finally, in addition to employers who are responsible for providing safe and healthful workplaces under the Federal program, owners, lessors, agents and managers who control premises used as places of employment in the Virgin

Islands are subject to the enforcement provisions of the Virgin Islands Occupational Safety and Health Act. The Assistant Secretary's initial approval of the developmental plan for the Virgin Islands, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart S; 38 FR 24897 (September 11, 1973)).

In accordance with the State's developmental schedule all major structural components of the plan were put in place and submitted for OSHA approval during the period ending August 31, 1976. These "developmental steps" included amendments to the Virgin Islands Occupational Safety and Health Act, promulgation of State occupational safety and health standards and program regulations, and the recruitment and training of agency staff. The developmental schedule required the Virgin Islands enforcement program to be fully operational by July 1, 1975. In completing this developmental step, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, a Field Operations Manual, management information system, agency organizational chart, merit staffing system, public information system and safety and health posters for private and public employees. These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of Section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Virgin Islands subpart of 29 CFR was amended to reflect each of these approval determinations (see 29 CFR 1952.254). On September 22, 1981, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that the Virgin Islands had satisfactorily completed all developmental steps (46 FR 48807). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Virgin Islands plan—to be at least as effective as corresponding Federal provisions. Certification does not entail findings or conclusions by OSHA concerning adequacy of performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of

State activity to determine in accordance with Section 18(e) of the Act whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

Determination of Eligibility

This Federal Register notice announces the eligibility of the Virgin Islands plan for an 18(e) determination. (29 CFR 102.39(c) requires that this preliminary determination of eligibility be made before 18(e) procedures begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The Virgin Islands plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are prepared annually and made available to the State and to the public. The results of OSHA's post-certification monitoring (September 1981 to October 1982) are set forth in an 18(e) *Evaluation Report of the Virgin Islands Plan*, which has been made part of the record of the present proceedings.

(2) The plan meets the State's benchmarks for enforcement staffing. In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL-CIO v. Marshall*, C.A. No. 74-406) to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program; States must meet these staffing levels or 'benchmarks' in order to qualify for final approval. In 1980, OSHA submitted a *Report to the Court* containing the benchmarks and requiring the Virgin Islands to allocate three safety compliance officers and one industrial hygienist (public sector only) to conduct inspections under the plan. The Virgin Islands has allocated these positions, as evidenced by the FY 1983 *Application for Federal Assistance* (as amended) in which the State has committed itself to funding the State share of salaries for three safety inspectors and the equivalent of one full-time health compliance officer. The FY 1983 application has been made part of the record in the present proceeding.

The formula used to establish "fully effective" safety benchmarks for all State plan States assumed a need for a frequent inspection of large manufacturing establishments with high injury/illness rates. Because the Virgin Islands' economy consists predominantly of small entities and includes very little manufacturing,

application of the 1980 benchmark formula resulted in achievable safety staffing levels for the Virgin Islands plan. In addition, the exclusion of health coverage from the State's program relieved the State of the extremely high health compliance staffing obligations imposed in many other States by the 1980 formula.

(3) The Virgin Islands participates and has assured its continued participation in the unified management information system presently being developed by OSHA.

Issues for Determination in the 18(e) Proceedings

The Virgin Islands plan is now in issue before the Assistant Secretary for determination as to whether the criteria of Section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary as part of the final approval process to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the Virgin Islands plan, contained in the 18(e) *Evaluation Report*, considered in light of these regulatory criteria and the criteria in Section 18(c) of the Act, indicate that the regulatory indices and criteria are being met and the Assistant Secretary accordingly has determined that the Virgin Islands plan is eligible for an affirmative 18(e) determination. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) *Standards and Variances*. Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3); 1902.3(c); 1902.4 (a) and (b). The Virgin Islands plan provides for adoption of standards identical to Federal standards and the State had always been prompt in doing so. However, for OSHA standards issued in 1980 and 1981, the Virgin Islands' adoption process averaged ten months after the Federal promulgation. 29 CFR Part 1953 requires response by plan States to new Federal standards within six months. At the close of the FY 1982 evaluation, Virgin Islands had adopted

all Federal standards and instituted administrative procedures to assure timely adoption in the future (18(e) *Evaluation Report* pp. 1-2). Response to Federal standards action since the end of FY 1982 has been promptly initiated and the State has given an assurance of timely adoption in the future.

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure coverage at least as effective as comparable Federal standards. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902.3(c)(1), 1902.3(d)(1), 1902.4(a), and 1902.4(b)(2). As already noted, the Virgin Islands plan provides for adoption of standards identical to the Federal standards. The Virgin Islands likewise adopts standards interpretations, which are identical to Federal. Although delays in adopting these changes are noted in the evaluation (18(e) *Evaluation Report* pp. 1-2, 23-24), appropriate corrective action has now been taken and effectively demonstrated subsequent to the close of the evaluation period.

The State is required to take the necessary administrative, judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is adopted from Federal standards or developed by the State. See § 1902.37(b)(5). No such challenges to State standards have occurred in the Virgin Islands.

When granting permanent variances from standards, the state is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if a permanent variance had not been granted. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). Although sections 36 (e) and (f) of the Virgin Islands Occupational Safety and Health Act provide for variances, no variances have been requested under the Virgin Islands plan during the 18(e) evaluation period.

Where a temporary variance is granted, the State must ensure that the employer complies with the standard as soon as possible. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). Section 36(e)(1) of the Virgin Islands Occupational Safety and Health Act requires that any

employer or owner granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. As noted above, no variance requests have been received.

(b) *Enforcement.* Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA. Section 18(c)(3) requires the State plan to provide for right of entry and inspection of all workplaces at least as effective as that in Section 8 of the Act.

The State inspection program must provide that sufficient resources be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Data contained in the 18(e) evaluation indicates that 95.2% of State programmed (general schedule—safety) inspections are conducted in high hazard industries. (18(e) Evaluation Report p. 8) It should be noted that the method for compiling the high hazard inspection list used in scheduling State inspections differs from that used federally, due in part to the special nature of the Virgin Islands economy.

In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3(e) and (f), and 1902.4(c)(2)(i) and (ix). The Virgin Islands Occupational Safety and Health Act authorizes the Commissioner to petition any municipal court for an order to permit entry into such establishment that has refused entry for the purpose of inspection or investigation. The Virgin Islands had no denials of entry in FY 82. (18(e) Evaluation Report, p. 13)

Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See §§ 1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2). The Virgin Islands has adopted the Federal OSHA Field Operations Manual, and thus follows inspection procedures, including documentation procedures, which are substantially identical to Federal. The Evaluation Report notes adherence by the Virgin Islands to these procedures (p. 13). Comparison of Federal and State data shows a lower rate of violations per not-in-compliance inspection in the Virgin Islands (average of 2) and a lower percentage of serious violations (10.9%). However, on-site monitoring of State inspections by OSHA confirms the ability of State inspectors to recognize and classify violations. (18(e) Evaluation

Report p. 14-17.) State plans must include a prohibition on advance notice, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). The Virgin Islands has adopted Federal procedures including procedures for advance notice. There were no instances of advance notice during the current evaluation period. (18(e) Evaluation Report p. 13.)

State plans must provide for inspections in response to employee complaints, and must provide opportunity for employee participation in State inspections. See §§ 1902.4(c)(2)(i) through (iii). The Virgin Islands follows a policy of responding to all employee complaints by conducting an inspection. All State inspections during the current evaluation period included an employee representative on the walkaround or interviews with employees. (18(e) Evaluation Report p. 12-13) State plans must also provide protection for employees against discrimination similar to that found in Section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). The Virgin Islands Act, approved as part of the initial approval and certification process, contains such protection. No complaints of discrimination that merited investigation were received during the evaluation period. (18(e) Evaluation Report p. 22)

The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2)(x) and (xi). The State's lapse time from inspection to issuance of citation has averaged 12 days (18(e) Evaluation Report p. 23)

The State must propose penalties in a manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c)(2)(x) and (xi). The 18(e) evaluation indicates that the Virgin Islands proposes appropriate penalties (average penalty for serious violation is \$194) and notes that Virgin Islands final penalties were the same as proposed penalties, because there were few informal conferences and contests. (18(e) Evaluation Report, p. 21)

The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c)(2)(vii) and (xi). The Virgin Islands conducts a proportionately greater number of follow-up inspections than does Federal OSHA (18.9% of total inspections). The results of these follow-ups indicate that abatement is being

achieved. (18(e) Evaluation Report pp. 19-20)

Wherever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3(d) and (g). The 18(e) Evaluation Report for the Virgin Islands found no adverse adjudications which could result in program deficiencies.

(c) *Staffing and Resources.* State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See Section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1); 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See Section 18(c)(5) of the Act and § 1902.3(i). The Virgin Islands plan now provides for three safety compliance officers and for cross-training to provide the equivalent of one health professional for public sector coverage, as set forth in the Virgin Islands FY 1983 grant. This staffing level meets the "fully effective" benchmarks established for the Virgin Islands for health and safety staffing. Because of the small size of the program, administrative overhead is somewhat higher than Federal OSHA and the proportion of time spent on enforcement (53.7%) as opposed to administrative and other duties is lower for State compliance officer. (18(e) Evaluation Report, pp. 25-26.)

(d) *Other Requirements.* States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(k). The Virgin Islands plan provides a program in the public sector which is identical to that in the private sector with the exception that a system of follow-up inspections and administrative sanctions is used in lieu of penalties. Additionally, occupational health protection is provided. Injury rates are somewhat higher in the public sector than in the private. (5.5 all case rate; 3.2 lost workday case rate.) (18(e) Evaluation Report pp. 5-7)

As a factor in its 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health, indicate a

favorable comparison of worker safety and health, injury and illness rates between the State and Federal program. See § 1902.37(b)(15). The 1979, 1980, and 1981 BLS rates (all case rate and lost workday case rates) were lower than rates in States where Federal OSHA provides enforcement coverage in all areas analyzed except for construction. (Private sector all case rate 1979—5.2, 1980—4.6, 1981—5.1, private sector lost workday case rate 1979—3.1, 1980—2.6, 1981—2.6.) The Virgin Islands' lost workday injury rate in construction (8.0) significantly exceeds the Federal rate. This rate fluctuates rather widely annually which may be due to the wide variation of the amount of construction work performed each year and the use of transient workers who are unfamiliar with the environment. The change in lost workday injury rates between 1979 and 1980 in three of the most hazardous industries in the State, Construction—general, Special Trades Contractors, and Petroleum Refining, likewise exceeded comparable Federal data. These differences may be attributed to random statistical fluctuation. The 18(e) Evaluation Report concludes that the rate changes in these industries are explained in terms of local conditions and statistical anomalies. (18(e) Evaluation Report pp. 28–29.)

State plans must assure that employers in the state submit reports to the Secretary in the same manner as if the plan were not in effect. See Section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(l). Virgin Islands employer recordkeeping requirements are substantially identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries. As noted above, the State participates and has assured its continuing participation with OSHA in the unified management information system as a means of providing reports on its activities to OSHA.

Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. The evaluation report notes that a training and consultation program has been established and although the staff position responsible for this program was vacant during some of FY 1982 a consultant/educator was employed in

March 1982. No requests for training were received during the current evaluation period. Requests for technical assistance were responded to by administrative staff. Training, education, and consultative services are now fully available to Virgin Islands' employees and employers. (18(e) Evaluation Report, pp. 3–4.)

Effect of 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the Virgin Islands plan, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). Because the issues of occupational health and maritime safety and health are not within the scope of the Virgin Islands plan, Federal coverage of these issues would be unaffected by an affirmative 18(e) determination. In the event an affirmative 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the Federal Register in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to discrimination complaints under Section 11(c) of the Act remains in effect, and will state that Federal enforcement may be reinstated if continuing evaluations show that the State has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953. At the same time, Subpart S of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the Virgin Islands plan, would be amended to reflect the 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the Virgin Islands 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room S-6212, Docket No. T-2, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Regional Administrator, U.S. Department of Labor, OSHA, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036
Area Director, U.S. Department of Labor—OSHA, U.S. Court House and FOB, Carlos Chardon Avenue, Room 555, Hato Rey, Puerto Rico 00918
Office of the Commissioner, Virgin Islands Department of Labor, Division of Occupational Safety and Health, Hospital Street, Christiansted, St. Croix Virgin Islands 00820

To date, the record includes copies of all Federal Register documents regarding the plan including notices of plan submission, initial Federal approval, certification of completion of developmental steps, and codification of the State's operational Status agreements, and approval of various standards, developmental steps, and other plan supplements. The record also includes the State plan document which includes a plan narrative, the State legislation, regulations and procedures, an organization chart for State staffing; the State's FY 1983 Federal grant; and the 18(e) Evaluation Report.

Public Participation

Request for Public Comment: In order to solicit information and encourage public participation as an essential part of its process to evaluate the Virgin Islands State plan and make a decision on the appropriateness of an affirmative 18(e) determination, OSHA invites interested members of the public to submit written comment.

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by the Virgin Islands of the requirements of Section 18(c) of the Act and all the specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the 15 factors in 29 CFR 1902.37(b)(1)–(15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during the informal public hearing is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they

apply to the Virgin Islands State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and arguments with respect to this 18(e) determination. These comments must be postmarked on or before June 15, 1983, and submitted in quadruplicate to the Docket Officer, Docket No. T-2, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. Written submission must clearly identify the issues which are addressed and the position taken with respect to each issue.

Public Participation in Hearing: A hearing has been scheduled for Wednesday, June 29, 1983, commencing at 9:30 a.m. in the Federal Building, U.S. Courthouse, Room 110, Veteran's Drive, No. 26, St. Thomas, Virgin Islands.

The purpose of this informal, legislative type hearing is to present an opportunity to the public and particularly employers and employees in the Virgin Islands affected by the State program to participate fully in OSHA's process of deciding whether or not to make an affirmative 18(e) determination for the Virgin Islands State plan. The public is encouraged to submit written comments and to appear in person at the informal public hearing. The conditions set forth below for the public hearing are meant to give the Administrative Law Judge and OSHA the flexibility needed to assure an orderly and complete hearing. OSHA seeks to elicit from the public varied written comments and oral testimony. Every attempt will be made to accommodate all interested persons.

Notices of Intention to Appear: OSHA's informal hearings are open to the public and the media. An interested party need not submit prior notice to attend the hearing. However, in order to assure participation (that is, to present oral or written testimony, to ask questions of witnesses, or to submit posthearing submissions) an interested party must file a notice of intention to appear. Persons desiring to participate at the hearing must file a notice of intention to appear by June 15, 1983. The notice of intention to appear must contain the following:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and

6. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing: Any party requesting more than 15 minutes for presentation at the hearing or who will submit documentary evidence must provide, in quadruplicate, the complete text of its testimony, including all documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs by June 15, 1983.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with the above requirements may be limited to a 15 minute presentation, and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

Notices of intention to appear, testimony, and evidence will be available for inspection and copying at the Docket Office, Docket No. T-2, U.S. Department of Labor, Occupational Safety and Health Administration, Room S-6212, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523-7894.

The hearing will commence at 9:30 a.m. at the scheduled location with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by the Administrative Law Judge who will have the powers necessary or appropriate to conduct a full and fair information hearing as provided in 29 CFR Part 1902, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections, and comparable matters;
3. To confine the presentation to the issues specified in this notice of hearing;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. To provide an opportunity for cross examination on pertinent issues;
6. To provide for a verbatim transcript of the hearing which shall be available to any interested person on such terms as the judge shall establish;
7. To take official notice of material facts not appearing in the evidence in the record provided the parties are

afforded an opportunity to show evidence to the contrary; and

8. In the Judge's discretion, to keep the record open for a reasonable and specified time to receive additional recommendations, with supporting reasons and any additional data, views, and arguments from any person who has participated in the oral proceeding.

Conduct of the Hearing: Upon the completion of the oral presentations the transcripts thereof, together with written submissions on the proceedings, exhibits filed during the hearing, and all post hearing comments, recommendations, and supporting reasons shall be certified by the Administrative Law Judge presiding at the hearing to the Assistant Secretary.

The Assistant Secretary will, within a reasonable time after the certification of the record of the hearing, publish his decision in the *Federal Register*. All written and oral submissions, as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and materials submitted in response to this notice and notices of intention to appear at the public hearing, will be available for inspection and copying in the Docket Office, Room S6212, at the above address, between the hours of 8:15 a.m. and 4:45 p.m.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in the Virgin Islands under any new or different requirements nor would any additional burden be placed upon the Territorial government beyond the responsibilities already assumed as part of the approved plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 2d day of May 1983.

Thorne G. Auchter,
Assistant Secretary of Labor.

[FR Doc. 83-12206 Filed 5-5-83; 8:45 am]
BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[WH-FRL 2630-3]

Ocean Dumping; Change of Starting Time for Public Hearing on 106-Mile Ocean Dump Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of change of starting time for public hearing.

SUMMARY: EPA today announces a revised starting time for the public hearing to be held in Rehoboth Beach, Delaware, on May 10, 1983, to receive public comment on the proposed designation of the 106-Mile Ocean Dump Site as an EPA approved ocean dumping site.

DATE: The public hearing will be held on May 10, 1983.

ADDRESSES: Send comments or statements to: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-585), EPA, Washington, D.C. 20460.

The hearing will be held in the Rehoboth Beach Convention and Civic Center, 73 Rehoboth Avenue, Rehoboth Beach, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, 202/755-0356.

SUPPLEMENTARY INFORMATION: On April 18, 1983, EPA published in the *Federal Register* a Notice of Public Hearing on the 106-Mile Ocean Dump Site. 48 FR 16508. That notice stated that the morning session would start at 10 a.m. Instead, the morning session will start at 9 a.m. The balance of the information contained in that notice is correct.

Dated: April 27, 1983.

Frederic A. Eldness, Jr.,
Assistant Administrator for Water.

[FR Doc. 83-12190 Filed 5-5-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 264, 265, and 267

[SWH-FRL 2360-2]

Hazardous Waste Disposal Facilities; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: On December 17, 1980 (45 FR 82964), and May 28, 1981, (46 FR 28680), the Environmental Protection Agency announced in the *Federal Register* the availability of drafts of eight Technical Resource Documents providing design and evaluation information related to hazardous waste disposal facilities. These drafts had undergone previous review and revision by recognized experts from various industries, universities, professional organizations, environmental and community groups, State agencies, and other Federal offices with related responsibilities. Public comment on the accuracy and usefulness of the information presented in the documents was solicited. Comments received were evaluated by the Agency and the publications were revised by incorporating the suggestions for improvements. Today's notice announces the availability of eight revised Technical Resource Documents. These latest editions supersede earlier draft versions.

DATES: Comments on these reports will be accepted at any time. The reports will be revised as needed from comments received and/or as new information becomes available.

ADDRESS: Comments should be addressed to Docket Clerk, Room S-269(c), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Communications should identify the document title (e.g., *Closure of Hazardous Waste Surface Impoundments*, SW-873).

Copies of these reports are available for reading at the EPA Library and Subtitle C Docket Room (Room S-269(c)), both located at 401 M Street, S.W., Washington, D.C., during the hours of 9:00 a.m. to 4:30 p.m., Monday through Friday.

Copies of the Technical Resource Documents are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402, (202) 783-3238. The following is a list of all eight Technical Resource Documents with GPO stock number and price for those currently available.

	GPO Stock No.	GPO price
1. Evaluating Cover Systems for Solid and Hazardous Waste (SW-867)	055-000-00228-2	\$4.75
2. Hydrologic Simulation on Solid Waste Disposal Sites (SW-868)	055-000-00225-8	6.00
3. Landfill and Surface Impoundments Performance Evaluation (SW-869)	055-000-00233-9	5.00
4. Lining of Waste Impoundment and Disposal Facilities (SW-870)	055-000-00231-2	11.00
5. Management of Hazardous Waste Leachate (SW-871)	055-000-00224-0	11.00
6. Guide to the Disposal of Chemically Stabilized and Solidified Waste (SW-872)	055-000-00226-6	6.00
7. Closure of Hazardous Waste Surface Impoundments (SW-873)	055-000-00227-4	5.50
8. Hazardous Waste Land Treatment (SW-874)	055-000-00232-1	

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, at (800) 424-9346 (toll free) or at (202) 382-3000. For technical information contact Art Day at (202) 382-4480.

SUPPLEMENTARY INFORMATION:

Historical Perspective: EPA has issued a number of regulations for hazardous waste management facilities under the authority of Section 3004 of the Resource Conservation and Recovery Act (RCRA). Regulations addressing land disposal of hazardous waste were issued in 40 CFR Parts 264, 265, and 267. The major pieces of the land disposal regulations were published in the *Federal Register* on May 19, 1980 (45 FR 33154-33285), February 13, 1981 (46 FR 12414), and July 26, 1982 (47 FR 32274).

These regulations contain many environmental and design performance requirements needing specific technical (design and operation) implementation on a case-by-case basis. Technical information is needed by both the regulated facility owner or operator and by the State or Federal official making permit decisions. To help provide this information, the Agency is developing three types of guidance documents: (1) Permit Guidance Manuals, (2) RCRA Technical Guidance Documents, and (3) Technical Resource Documents (TRDs). The Permit Guidance Manuals and RCRA Technical Guidance Documents are directly related to the regulations. The TRDs describe current technologies for designing and operating hazardous waste disposal facilities, or for evaluating the performance of a facility design. Some of this information is useful in meeting the requirements of the regulations. However, not all the information in the TRDs is directly related to the regulations, because their intent is to summarize useful state-of-

the-art information. The TRDs should not be used for interpreting regulatory requirements.

The RCRA Technical Guidance Documents present design and operating specifications or design evaluation techniques that generally comply with or demonstrate compliance with the Design and Operating Requirements and the Closure and Post-Closure Requirements of Part 264. Parts of the TRDs are referenced in, and therefore support, the RCRA Technical Guidance Documents and Permit Guidance Manuals by describing current technologies to meet or evaluate these design and operating specifications.

The Permit Guidance Manuals will provide guidance to applicants and permit writers in preparing and reviewing permit applications for hazardous waste land treatment, storage and disposal facilities. These manuals will include discussions of the permitting process and the specifications that must be considered for inclusion in the permit.

Review Process: Initial drafts of the eight TRDs went through the standard Agency Peer Review process. The Review Committee was composed of experts and representatives from industry, the academic community, professional organizations, State agencies, environmental and community groups, and various Federal offices. The drafts were revised after this extensive review process, and were printed and made available (announcements of December 17, 1980, and May 28, 1981) to the public for comment and use. Public comments on these drafts were evaluated by the Agency's professional staff, and feasible suggestions along with new technical information have been incorporated into the publications being announced today. All public comments and a summary of their disposition and rationale for action are on file in the Docket, Room S269(c).

Current Status: The Agency is today making available revised editions of the eight TRDs. These revised documents supersede earlier draft versions. As new information is developed, the Agency intends to update each of the TRDs so that it reflects state-of-the-art information. Additional TRDs will also be developed and made available to the public for comment. EPA welcomes comments on other technical subjects that the public thinks should be developed into Technical Resource Documents.

Drafts of the RCRA Technical Guidance Documents are in the EPA regional and headquarters libraries and the Subtitle C Docket room. These drafts are currently being revised and are

scheduled for printing in early 1983. Draft Permit Guidance Manuals are scheduled for early to mid 1983. Availability of both sets of guidance manuals will be announced to the public in the *Federal Register*.

Under Executive Order 12291, EPA must judge whether a regulation or rule, including any implementation guidance, is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This notification is not of a regulatory nature. It simply announces to the public the availability of the latest technical information on designing, operating, and evaluating solid and hazardous waste disposal facilities. This notice and the eight technical resource documents, however, were submitted for review and cleared for publication by the Office of Management and Budget.

Dated: April 22, 1983.

Jack McGraw,
Acting Assistant Administrator for Solid Waste and Emergency Response.

(FR Doc. 83-12076 Filed 5-5-83; 8:45 am)

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

41 CFR Part 44-17

Extraordinary Contractual Adjustment Procedures

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This rule establishes standards and procedures for disposition of requests for extraordinary contractual action pursuant to Pub. L. 85-804 and Executive Order 10789. The regulation is needed to implement the statute and Order, and to supplement that part of the Federal Procurement Regulations dealing with extraordinary actions to facilitate the national defense (41 CFR 1-17).

DATE: Comments are due on or before July 5, 1983.

ADDRESS: Send comments to Rules Docket Clerk, Office of General Counsel, Room 835, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Watson, Associate General Counsel, Telephone (202) 287-0376.

SUPPLEMENTARY INFORMATION: FEMA has been delegated authority to take certain extraordinary contractual actions to facilitate the national defense under the terms of Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789. General regulations applicable to

all agencies to whom the authority has been delegated have been issued by General Services Administration, 41 CFR Par 1-17. FEMA needs to supplement these regulations with provisions applicable to it only. This regulation does that but must be read with the GSA regulation.

An environmental assessment is not necessary as this rule is procedural and has no effect on the quality of the human environment. The rule is not a major rule as defined in section 1(b) of Executive Order 12291, nor will it have a significant, economic impact on a substantial number of small entities. Hence, regulatory impact analyses are not necessary. The regulation does not contain any information requirements subject to the provisions of 44 U.S.C. 3504(h).

List of Subjects in 41 CFR Part 44-17.

Government procurement.

Accordingly, Title 41 CFR Chapter 44 is proposed to be amended by adding a new part as follows:

PART 44-17—EXTRAORDINARY CONTRACTUAL ADJUSTMENT PROCEDURES

Sec.

44-17.000 Scope of part.

Subpart 44-17.1—General

44-17.101 Authority.

44-17.102 General policy.

44-17.103 Types of action.

Subpart 44-17.2—Procedures

44-17.201 Procedures for filing requests.

44-17.202 Records.

44-17.203 Investigation.

44-17.204 Action by the Contract Adjustment Board.

44-17.205 Action by Office of Acquisition Management.

Subpart 44-17.3—Contract Adjustments

44-17.301 General.

44-17.302 Amendments without consideration.

44-17.303 Correction of mistakes.

44-17.304 Formalization of informal commitments.

44-17.305 Advance payments.

44-17.306 Residual powers.

44-17.306-1 Indemnification of contractors for unusually hazardous or nuclear risks.

Subpart 44-17.4—Administration

44-17.401 Reports.

44-17.402 Interagency coordination.

Authority: 50 U.S.C. 1431-1435; E.O. 10789; E.O. 12148.

§ 44-17.000 Scope of part.

This part establishes standards and procedures for the disposition of requests for extraordinary contractual action by contractors of the Federal

Emergency Management Agency (hereinafter referred to as "FEMA") pursuant to Pub. L. 85-804 (found at 50 U.S.C. 1431 through 1436 and hereinafter referred to as "the Act") and Executive Order 10789, as amended (hereinafter referred to as the "Executive Order") and Executive Order 12148. This part supplements the extraordinary contractual actions to facilitate the national defense portion of the Federal Procurement Regulations (41 CFR Part 1-17). The reader of this part should refer to the Federal Procurement Regulation when processing requests for extraordinary contractual actions.

Subpart 44-17.1—General

§ 44-17.101 Authority.

(a) All authority granted by 41 CFR 1-17.101 may be exercised by the Director of the Federal Emergency Management Agency (hereinafter referred to as "the Director"). However, such authority to approve actions under the Act which do not obligate the United States in excess of \$50,000 are delegated to the Chief, Acquisition Management. The limitations contained in 41 CFR 1-17.205-2 apply to said Chief. Where 41 CFR Part 17 requires action or approval at "secretarial level," such action shall be taken by the Director.

(b) As cases arise under the Act, the Director of FEMA shall appoint, as needed, a FEMA Contract Adjustment Board consisting of one senior staff member, not otherwise involved with the action under consideration, from each of the following offices:

- (1) Acquisition Management
- (2) General Counsel
- (3) Comptroller

The Board shall prescribe its own procedures and has power to do all acts and things necessary or appropriate for the conduct of their functions. The decisions of the Board shall be final but each Board may reconsider, modify, correct or reverse any of its previous decisions.

§ 44-17.102 General policy.

The general policies of 41 CFR 1-17.102 apply. If it is at all practicable, other authority shall be used to settle claims by contractors before using authority of the Act and this Part.

§ 44-17.103 Types of action.

FEMA may take any type of action authorized under 41 CFR 1-17.103. However, any action taken under this Part shall be subject to the limitations contained in 41 CFR 1-17.205-1.

Subpart 44-17.2—Procedures

§ 44-17.201 Procedures for filing requests.

Any person seeking an adjustment under these regulations may file a request. Persons filing requests for extraordinary contractual actions with FEMA should file the request in duplicate with the cognizant contracting officer, the Director or with:

Chief, Office of Acquisition Management,
Federal Emergency Management Agency, 500
C Street, SW., Washington, D.C. 20472.

The form of the request and the facts and evidence required are described at 41 CFR 1-17.207-2 and 1-17.207-4.

§ 44-17.202 Records.

The cognizant contracting officer or, if none exists, a person appointed by the Chief, Office of Acquisition Management, shall maintain records relating to each request under the Act and shall be responsible for presentation of such record to the FEMA Contract Adjustment Board. Records shall be compiled in accordance with 41 CFR 1-17.207-3, 1-17.208-4, 1-17.401, and 1-17.402. Also see 41 CFR 1-17.400.

§ 44-17.203 Investigation.

The cognizant contracting officer or person appointed in accordance with section 44-17.202 above shall fully investigate in accordance with 41 CFR 1-17.208-1 all aspects of the request including, but not limited to audit reports, documentary evidence, knowledge of individuals connected with the action involved and signed statements of material facts. Upon completion of the investigation, the investigator shall forward the report of the investigation with all exhibits and evidence to the Office of General Counsel with a letter stating:

- (a) The nature of the case,
- (b) The recommended disposition of the case, and
- (c) If extraordinary contractual relief is recommended, the opinion of the cognizant contracting officer that such relief will facilitate the national defense. The General Counsel or his designee shall review the investigation, the record and other relevant factors and shall forward them to the FEMA Contract Adjustment Board for further action.

§ 44-17.204 Action by the Contract Adjustment Board.

(a) The Board, upon receiving the file from the Office of General Counsel, may make further investigation as deemed necessary and will solicit the views of the contractor, the Board then acting in accordance with its own procedures, will render its decision as expeditiously

as possible and shall prepare a Memorandum of Decision, which shall meet the requirements of 41 CFR 1-17.208-3.

(b) Copies of the Board's decision will be transmitted to the cognizant contracting officer or, if none exists, the Chief of the Office of Acquisition Management for implementation. A copy of the decision and any evidence not previously sent will be forwarded to the contractor.

(c) Any adjustment involving expenditure in excess of \$50,000 must be approved by the Director before being implemented.

§ 44-17.205 Action by Office of Acquisition Management.

The Office of Acquisition Management shall implement the decision of the Board. Any contract entered into under this Part is subject to the requirements of 41 CFR 1-17.206, and to any applicable limitations of 41 CFR 1-17.205-2. The Memorandum of Decision shall be incorporated (as required by 41 CFR 1-17.304) in the record of the case.

Subpart 44-17.3—Contract Adjustments

§ 44-17.301 General.

This subpart described adjustments which may be made to existing contracts or arrangements which may be made where a contract should have been made. The remedies prescribed herein are only representative of those which the Contract Adjustment Board may fashion. Wherever possible, normal contracting procedures including, but not limited to, settlements under the Contract Disputes Act, should be utilized.

§ 44-17.302 Amendments without consideration.

Standards for this remedy are set forth at 41 CFR 1-17.204-2. The evidence required to support a claim for this remedy as set forth at 41 CFR 1-17.207-4 (b) and (c).

§ 44-17.303 Correction of mistakes.

Standards for this remedy are set forth at 41 CFR 1-17.204-3. The evidence required to support a claim for this remedy as set forth at 41 CFR 1-17.207-4(d).

§ 44-17.304 Formalization of informal commitments.

Broad authority for contracting officers to ratify informal commitments, after the fact, has been granted under the Contract Disputes Act of 1978. For any cases not falling under the authority

of that Act or other statutes or regulation, standards for informal commitments are set forth in 41 CFR 1-17.20-4. The evidence required to support a claim for this remedy is set forth at 41 CFR 1-17.207-4(e).

§ 44-17.305 Advance payments.

Standards and procedures for use of advance payments is set forth at 41 CFR Subpart 1-30.4.

§ 44-17.306 Residual powers.

Standards and procedures for use of residual powers under the Act are set forth in 41 CFR Subpart 1-17.3. Authority to approve actions obligating the United States in excess of \$50,000 shall be exercised only by the Director of FEMA.

§ 44-17.306-1 Indemnification of contractors for unusually hazardous or nuclear risks.

When entering into contracts requiring indemnification of contractors for unusually hazardous or nuclear risks, FEMA shall use procedures set forth in Defense Acquisition Regulation 17-303.2 (32 CFR 17-303.2). Where that regulation requires exercise of secretarial authority, such authority shall be exercised by the Director of FEMA.

Subpart 44-17.4—Administration

§ 44-17.401 Reports.

Reports required under 41 CFR 1-17.105 shall be prepared by the Office of Acquisition Management for approval and forwarding by the Director.

§ 44-17.402 Interagency/Coordination.

Where a case involves matters of interest to agencies other than FEMA, interagency coordination as prescribed by 41 CFR 1-17.208-2 shall be effectuated by the Office of Acquisition Management in consultation with the Office of General Counsel.

Dated: April 29, 1983.

Louis O. Giuffrida,
Director.

[FR Doc. 83-12129 Filed 5-3-83; 8:45 am]

BILLING CODE 6718-01-M

244 CFR Part 67

[Docket No. FEMA-6465]

Proposed Flood Elevation Determinations for City of Sunnyvale, Santa Clara County, California Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 47 FR 56668 of the Federal Register of December 20, 1982.

FOR FURTHER INFORMATION CONTACT:

Dr. Brian R. Mrazik, National Flood Insurance Program, (202) 287-0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The notice published on December 20, 1982 at 47 FR 56668 Page 72165, showing the following:

Bulter County, Kansas

Should be corrected to read:

City of Sunnyvale, Santa Clara County, California.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

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

Issued: April 6, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-12009 Filed 5-3-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6508]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and

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

DATE: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new

local ordinances, which if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with

these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new

requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Colorado	City of Fort Collins (Larimer County)	Dry Creek	25 feet upstream from centerline of North Lemay Avenue.	*4,948	*4,950
		Cache La Poudre River	Centerline of College Avenue 500 Feet north of the intersection of Riverside avenue and Smith Street.	*4,973 (1)	*4,974 *4,946
Maps available for inspection at City, Drafting Department, Fort Collins, Colorado 80522.					
Send comments to the Honorable Gary Cassell, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado. 80522.					
Florida	(Unincorporated) Clay County	North Prong Double Branch	At confluence with Double Branch About 2.0 miles upstream of confluence with Double Branch.	*32 *61	*32 *59
Idaho	Latah County (unincorporated areas)	Paradise Creek	Confluence with an unnamed stream approximately 2,000 feet north of the Burlington Northern Railroad. At D Street	(1) (1)	*2,587 *2,605
Maps available for review at the Office of the Auditor, Latah County Courthouse, 520 South Adam, Moscow, Idaho 83843.					
Send comments to Mr. Jay Nelson, Chairman, Board of County Commissioners, Latah County Courthouse, 520 South Adam, Moscow, Idaho 83843.					
Ohio	(V) Whithouse, Lucas County	Lone Oak Ditch	Downstream corporate limits Approximately 900 feet upstream of downstream corporate limits.	*643 *644	*644 *644
		Blue Creek	Downstream corporate limits	*639	*641
		Swan Creek	Downstream corporate limits	*639	*641
Oregon	Lebanon (city of), Linn County	South Santiam River	Upstream corporate limits Approximately 1,200 feet upstream of the Southern Pacific Railroad. Approximately 2,500 feet upstream of the Southern Pacific Railroad. At eastern corporate limits	*640 *344 *346 *355	*642 *344 *346 *355
Maps available for review at City Hall, 925 Main Street, Lebanon, Oregon 97355.					
Send comments to the Honorable Robert G. Smith, Mayor, City of Lebanon, 925 Main Street, P.O. Box 247, Lebanon, Oregon 97355.					
Wisconsin	(C) Richland Center, Richland County	Pine River	About 6,200 feet downstream Bohmann Drive At upstream corporate limits	*740 *734	*720 *738
		Center Creek	Mouth at Pine River	*737	*733
		Brush Creek	Mouth at Pine River	*737	*736

¹ Area between limits of base flood and 500-year flood.
² Not published.

Pursuant to the provisions of 5 U.S.C. 805(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

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

Issued: April 6, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

(FR Doc. 83-12002 Filed 5-5-83; 8:45 am)

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6509]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These (100-year) flood

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

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below

FOR FURTHER INFORMATION CONTACT:

Dr. Brian Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) floor elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of

1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR, Part 67.

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Thatcher (town), Graham County	Frye Creek Frye Creek Tributary	At the intersection of Frye Creek Road and Sage Trail At the intersection of Dry Gulch Drive and Pinaleno Mountain Drive.	*3,089 *3,088
Maps available for inspection at the Engineer's Office, 220 College Avenue, Thatcher, Arizona. Send comments to Honorable Ladd Mullenaux, P.O. Box 670, Thatcher, Arizona 85552.				
Florida	Ft. Pierce (city), St. Lucie County	Atlantic Ocean	At the center of intersection of Porpoise Avenue and Granada Street. At the center of intersection of Melody Lane and Atlantic Avenue. At the center of intersection of North 2nd Street and Port Ave. 100 feet east from the center of intersection of Port Avenue and Harbor Street.	*7 *8 *9 *10
Maps available for inspection at City Hall, Ft. Pierce, Florida. Send comments to Honorable Frank Blackwell, P.O. Box 1480, Ft. Pierce, Florida 33454.				
Florida	Jupiter Island (town), Martin County	Atlantic Ocean	200 feet west from the center of intersection of Linx Road and Grassy Trail. 400 feet east from the center of intersection of Allen Trail and North Beach Road.	*6 *11
Maps available for inspection at Town Hall, Town of Jupiter Island, Hobe Sound, Florida. Send comments to Honorable Robert F. Vande Weghe, P.O. Box 7, Hobe Sound, Florida 33455.				
Florida	Martin County (unincorporated areas)	Atlantic Ocean Lake Okeechobee	At the center of the intersection of Laurel Lane and Bridge Road. At the center of the intersection of Palmetto Terrace and Pine Lake Drive. At the center of the intersection of Williams Way and Leonard Lane. At the center of the intersection Skyline Drive and Indian River Drive. At the confluence of St. Lucie Canal with Lake Okeechobee.	*6 *7 *9 *23

Maps available for inspection at Engineering Department, 50 Kindred Street, 3rd Floor, Stuart, Florida.
Send comments to the Honorable Robert H. Oldland, P.O. Box 626, Stuart, Florida 33495.

Proposed Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Florida	Ocean Breeze Park (town), Martin County	Atlantic Ocean—Indian River	At the center of intersection of Hibiscus Drive and Circle Drive. At the center of intersection of Little Bit Lane and Indian River Drive.	*8 *9
Maps available for inspection at Town Hall, Jensen Beach, Florida. Send comments to Honorable Carl E. Hoke, P.O. Box 846, Jensen Beach, Florida 33457.				
Florida	St. Lucie County (unincorporated areas)	Atlantic Ocean	At the center of the intersection of Las Olas Drive North and Elmar Drive. At the center of the intersection of Osceola Boulevard and Banyan Road.	*9
Maps available for inspection at Development Coordinator's Office, 2300 Virginia Avenue, Ft. Pierce, Florida. Send comments to Honorable William Palmer, 2300 Virginia Avenue, Room 104, Ft. Pierce, Florida 33450.				
Illinois	(C), Clinton, De Witt County	Coon Creek	About 2,760 feet downstream of Madison Street About 180 feet downstream of Illinois Central Gulf Railroad. Just upstream of Illinois Central Gulf Railroad About 2,290 feet upstream of Alexander Street At mouth	*698 *709 *714 *716 *714
		Goose Creek	Just downstream of Illinois Central Gulf Railroad	*722
		Tennile Creek	Just downstream of Old Lincoln Road About 400 feet upstream of Woodlawn Avenue	*700 *706
Maps available for inspection at City Hall, Zoning, Building and Public Safety Office, 118-120 West Washington, Clinton, Illinois. Send comments to Honorable Stanley J. Stipes, Mayor, City of Clinton, City Hall, 118-120 West Washington, Clinton, Illinois 61727.				
Illinois	(Unincorporated), Carroll County	Mississippi River	At downstream County Boundary At upstream County Boundary	*594 *600
Maps available for inspection at the Clerk's Office, Carroll County Courthouse, Mt. Carroll, Illinois. Send comments to Honorable Donald Swanson, Chairman, Carroll County Board, Carroll County Courthouse, Mt. Carroll, Illinois 61053.				
Illinois	(V), Union, McHenry County	Railroad Creek	About 400 feet downstream of Chicago and North Western Railroad. Just upstream of Prairie Street About 1,100 feet upstream of Main Street	*635 *640 *650
Maps available for inspection at the Village Hall, Union, Illinois. Send comments to Honorable Ron Miller, Village President, Village of Union, 17909 O-Cock, Union, Illinois 60180.				
Illinois	(V), Wonder Lake, McHenry County	Nippersink Creek	About 1,800 feet downstream of Thompson Road About 1,000 feet upstream of Thompson Road	*608 *614
Maps available for inspection at the Village Hall, 8806 Burton Road, Wonder Lake, Illinois. Send comments to Honorable William P. Andrea, Acting Village President, Village of Wonder Lake, P.O. Box 238, Wonder Lake, Illinois 60097.				
Kentucky	Unincorporated Areas of Lawrence County	Big Sandy River	At the confluence of Big Sandy River and Blaine Creek.	*568
		Blaine Creek	Approximately 130 feet downstream of State Highway 3. Just downstream of the Covered Bridge	*582 *591
			Approximately 100 feet downstream of State Highway 32.	*654
		Left Fork Blaine Creek	Approximately 530 feet upstream of State Highway 469.	*602
		Levisa Fork	Just upstream of Unnamed Bridge (approximately 1,800 feet northwest of Borders Chapel).	*592
		Right Fork Blaine Creek	Approximately 2,000 feet upstream of State Highway 469.	*661
		Tug Fork	Approximately 1,000 feet upstream of the confluence of Baker Branch (approximately 1,400 feet northwest of Concord Church).	*598
			Approximately 550 feet downstream of the Lawrence County-Martin County boundary.	*608
Maps available for inspection at County Judge's Office, Lawrence County Courthouse, 230 Main Cross Street, Louisa, Kentucky 41230. Send comments to Judge Ray Williams or Mr. Thaddeus Miller, Administrative Assistant, County Courthouse, P.O. Box 38, Louisa, Kentucky 41230.				
Kentucky	City of Martin, Floyd County	Beaver Creek Right Fork Beaver Creek	At Chessie System Railroad Approximately 500 feet downstream of State Highways 80 and 122.	*659 *652
Maps available for inspection at the City of Martin Fire Station, Martin, Kentucky 41649. Send comments to Mayor Larry Hall, City of Martin Fire Station, Martin, Kentucky 41649.				
Maine	Biddeford, City, York County	Atlantic Ocean	Shoreline at Horseshoe Cove Shoreline at East Point Shoreline approximately 500 feet northeast of Main Street (extended).	*14 *20 *25
		Saco River	Upstream Cataract Dam Upstream Springs Dam Upstream Interstate Route 95 Approximately 2 miles downstream State Route 5. Upstream corporate limits	*48 *57 *61 *65 *70

Proposed Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Little River	Approximately 0.6 mile downstream of Pool Street.	*9
			Upstream Pool Street	*16
			Upstream Oak Ridge Road	*27
		Moors Brook	Downstream Meetinghouse Road	*9
			Approximately 1.54 miles upstream Meetinghouse Road	*44
		Thatcher Brook	At confluence with Saco River	*58
			At South Street	*59

Maps available for inspection at the City Clerk's Office, City Hall, 205 Main Street, Biddeford, Maine.

Send comments to Honorable Martin J. Reilly, Mayor of Biddeford, City Hall, 205 Main Street, Biddeford, Maine 04005.

Maine	Kittery, Town, York County	Atlantic Ocean	Shoreline of community northwest of Horn Island	*16
			Inland of Wood Island	*14
		Spruce Creek	Wilson Road (downstream)	*9
			Approximately 0.4 mile upstream of Wilson Road	*19
		Spinney Creek	Approximately 370 feet downstream of Leach Road	*9
			Dennett Road (upstream)	*30

Maps available for inspection at the Town Municipal Building, Kittery, Maine.

Send comments to Honorable John R. Kennedy, Kittery Town Manager, Town Hall, P.O. Box 303, Kittery, Maine 03903.

Maine	Old Orchard Beach, Town, York County	Atlantic Ocean	Shoreline at Atlantic Avenue (extended)	*13
			Shoreline at York Street (extended)	*14
			Shoreline at Odesa Avenue (extended)	*15
		Goosefare Brook	At mouth	*9
			Downstream of Boston and Maine Railroad Bridge	*10
			Downstream of Ocean Park Road	*17
			Downstream of Ross Road	*20
			Upstream corporate limits	*29
		Mill Brook	Upstream of Ross Road	*6
			430' Downstream of Portland Road	*19

Maps available for inspection at the Planner's Office in the Town Hall, Old Orchard Beach, Maine.

Send comments to Honorable Jerome Plants, Town Manager of Old Orchard Beach, Town Hall, Old Orchard Beach, Maine 04063.

Massachusetts	Chester, Town, Hampden County	West Branch of the Westfield River	Downstream corporate limits	*420
			Upstream Old State Highway	*482
			Upstream First Private Road	*532
			Upstream CONRAIL fourth crossing	*638
			Upstream Middlefield Road	*670
			Upstream sixth CONRAIL crossing	*723
			Upstream corporate limits	*745
		Middle Branch of the Westfield River	Downstream Kinnebrook Road	*568
			Upstream Smith Road	*680
			Upstream of Herring Road	*737
			Upstream corporate limits	*775
		Walker Brook	Confluence with West Branch of the Westfield River	*596
			Upstream Hampden Street	*650
			Upstream Walker Island Road	*767
			Upstream corporate limits	*793
		Austin Brook	Confluence with Walker Brook	*654
			Approximately 1,300' upstream of West Main Street	*733
		Otis Wait Brook	Confluence with West Branch of the Westfield River	*644
			Approximately 2,750' upstream of confluence with West Branch of the Westfield River	*705

Maps available for inspection at the Town Hall, Middlefield Street, Chester, Massachusetts.

Send comments to Honorable Albert Holland, Chairman of the Chester Board of Selectmen, Town Hall, Middlefield Street, Chester, Massachusetts 01011.

Massachusetts	Fall River, City, Bristol County	Mount Hope Bay	Shoreline at I-196 bridge	*21
			Shoreline at Middle Street extended	*20
			Shoreline at Mount Hope Avenue extended	*20
		Taunton River	At shoreline south of Brightman Street bridge	*21
			Shoreline north of Brightman Street bridge	*15

Maps available for inspection at the City Hall, 1 Government Center, Fall River, Massachusetts.

Send comments to Honorable Carlton M. Viveros, Mayor of Fall River, 1 Government Center, Fall River, Massachusetts 02722.

Massachusetts	New Bedford, City, Bristol County	Buzzards Bay	Shoreline at Norman Street extended	*19
			Shoreline at Lucas Street extended	*18
			Shoreline at Osborn Street extended	*18
			Shoreline at Brook Avenue Extended	*25
		Acushnet River	Entire shoreline within community	*6

Maps available for inspection at the Planning Office in the City Hall, New Bedford, Massachusetts.

Send comments to Honorable Nelson Macedo, Acting Mayor of the City of New Bedford, 133 Williams Street, New Bedford, Massachusetts 02740.

Michigan	(Twp), Eaton Rapids, Eaton County	Grand River	About 0.5 mile downstream of Columbia Highway	*857
			About 0.4 mile upstream of Confluence of Spicer Creek	*857

Maps available for inspection at the Township Office, 1114 North Gunnell, Eaton Rapids, Michigan.

Send comments to Honorable Reg. L. Smith, Supervisor, Township of Eaton Rapids, Eaton Rapids Township, 1114 North Gunnell, Eaton Rapids, Michigan 48827.

Proposed Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
Nevada	Carlin (city), Elko County	Humboldt River	75 feet upstream from the center of Western Pacific Railroad	*4,589
Maps available for inspection at the City Clerk's Office, City Hall, Carlin, Nevada. Send comments to Honorable Clarence Jones, P.O. Box 737, Carlin, Nevada 89622.				
Nevada	Elko (city), Elko County	Humboldt River	Intersection of Wilson Avenue and Lamolle Road 100 feet upstream of 12th Street	*5,048 *5,060
Maps available for inspection at City Engineer's Office, 1751 College Avenue, Elko, Nevada. Send comments to the Honorable D. George Corner, 1751 College Avenue, Elko, Nevada 89601.				
Nevada	Elko County (unincorporated areas)	Kittridge Creek	150 feet upstream of Interstate Highway 80 (U.S. Highway 40) Westbound. 200 feet north of the intersection of 7th Street and Seminole Road	*5,127 *5,238
		North Fork Humboldt River (Main Channel)	100 feet upstream of the Southern Pacific Railroad	*5,178
		North Fork Humboldt River Auxiliary Channel	100 feet downstream of Old U.S. Highway 40	*5,190
		Humboldt River (at Carlin)	150 feet upstream of Interstate Highway 80 (U.S. Highway 40) Westbound	*5,183
		Humboldt River (at Carlin)	500 feet north of the intersection of State Highway 61 and the Western Pacific Railroad	*4,684
		Humboldt River (at Elko)	50 feet downstream of the Western Pacific Railroad	*5,046
		Humboldt River Overflow	50 feet upstream of Western Pacific Railroad	*5,048
		Shallow Flooding	500 feet southwest along Western Pacific Railroad from the Western Pacific Railroad crossing of Humboldt River Overflow	#2
Maps available at the Department of Engineering, Elko County Courthouse, Elko, Nevada. Send comments to Honorable Ernie Hall, Elko County Courthouse, Elko, Nevada 89601.				
New Jersey	Bay Head, borough, Ocean County	Atlantic Ocean	Entire shoreline within community	*13
Maps available for inspection at the Municipal Building, 81 Bridge Avenue, Bay Head, New Jersey. Send comments to Honorable William M. Robertson, Mayor of the Borough of Bay Head, P.O. Box 245, Bay Head, New Jersey 08742.				
New Jersey	Byram, Township, Sussex County	Musconetcong River	Downstream corporate limits Downstream Access Road between CONRAIL and Lubbers Run Corporate Limits upstream of Chestnut Road (extended)	*642 *655 *711 *670
		Lubbers Run	Corporate limits at CONRAIL bridge upstream of Lake Musconetcong Confluence with Musconetcong River Upstream of U.S. Route 206 Upstream of Mansfield Drive Upstream of Dam at Lake Lackawanna Downstream of Lake Drive Upstream of Spillway which is upstream of Lackawanna Drive Upstream of Old Stanhope Road	*661 *665 *714 *722 *723 *786 *809
Maps available for inspection at the Municipal Building, 10 Mansfield Drive, Byram, New Jersey. Send comments to Honorable Catherine M. Torney, Mayor of Byram Township, Municipal Building, 10 Mansfield Drive, Stanhope, New Jersey 07874.				
New Jersey	Deal, Borough, Monmouth County	Atlantic Ocean	Entire shoreline within community	*13
		Deal Lake	Entire shoreline within community	*11
Maps available for inspection at the Municipal Building, Durant Square, Deal, New Jersey. Send comments to Honorable Stanley Katz, Mayor of Deal Borough, P.O. Box 56, Deal, New Jersey 07723.				
New Jersey	Long Branch, city, Monmouth County	Atlantic Ocean	Atlantic Avenue (extended) Sea View Avenue (extended) Avery Avenue (extended) Lincoln Avenue (extended) Naragansett Avenue (extended) Seventh Avenue (extended) Grand Avenue (extended)	*14 *14 *13 *13 *11 *10 *9
Maps available for inspection at the Office of the Planning Department, City Hall Annex, 344 Broadway, Long Branch, New Jersey. Send comments to Honorable Philip O. Huhn, Mayor of the City of Long Branch, City Hall, 344 Broadway, Long Branch, New Jersey 07740.				
New Jersey	Manasquan, borough, Monmouth County	Atlantic Ocean	Entire shoreline within community	*13
Maps available for inspection at the Municipal Building, 15 Taylor Avenue, Manasquan, New Jersey. Send comments to Honorable William W. Donovan, Mayor of the Borough of Manasquan, 15 Taylor Avenue, Manasquan, New Jersey 08736.				
New Jersey	Mantoloking, borough, Ocean County	Atlantic Ocean	Entire shoreline within community	*13
		Barnegat Bay	Entire shoreline of Barnegat Bay within community	*7
Maps available for inspection at the Municipal Building, Downer and Bay Avenues, Mantoloking, New Jersey. Send comments to Honorable Donald D. Tubbs, Mayor of the Borough of Mantoloking, P.O. Box 247, Mantoloking, New Jersey 08783.				
New Jersey	Seaside Park, borough, Ocean County	Atlantic Ocean	Entire Atlantic Ocean shoreline within community	*13
		Barnegat Bay	Entire Barnegat Bay shoreline within community	*7
Maps available for inspection at the Municipal Building, Sixth and Central Avenues, Seaside Park, New Jersey. Send comments to Honorable Joseph J. Delaney, Mayor of the Borough of Seaside Park, Municipal Building, Sixth and Central Avenues, Seaside Park, New Jersey 07522.				

Proposed Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	White, township, Warren County	Delaware River	Most downstream corporate limits	*229
			Shoreline at Foul Rift Road (extended)	*232
			Confluence Pohandusing Brook	*252
			Approximately 0.95 mile upstream of upstream Belvidere corporate limits (area not included)	*260
		Pequest River	Approximate center of Macks Island	*268
			Most upstream corporate limits	*273
			Downstream corporate limits	*285
			Upstream Farm Road bridge	*305
			100 feet upstream Broken Dam	*330
			Upstream first CONRAIL crossing	*363
			Upstream Buttzville Road	*375
		Beaver Brook	Upstream third CONRAIL crossing	*405
			Upstream corporate limits	*429
Confluence with Pequest River	*300			
Upstream CONRAIL crossing	*327			
	Upstream corporate limits	*352		
Maps available for inspection at Route 46 and Bridgeville Road, New Jersey 07823. Send comments to Honorable Fred W. Fuchs, Mayor of White, R.D. 1, Box 476A, Route 46 and Bridgeville Road, Belvidere, New Jersey 07823				
New York	Mechanicville, city, Saratoga County	Anthony Kill	Confluence with Hudson River	*63
			Upstream of Frances Street	*74
			Upstream of U.S. Route 4	*87
			Upstream corporate limits	*106
		Hudson River	Downstream corporate limits	*61
			Upstream of Mechanicville bridge	*63
			Upstream corporate limits	*63
Maps available for inspection at the City Hall, 32 North Main Street, Mechanicville, New York. Send comments to Honorable John Fascia, Mayor of Mechanicville, City Hall, 32 North Main Street, Mechanicville, New York 12118.				
New York	Poughkeepsie, city, Dutchess County	Hudson River	Entire shoreline within community	*9
			Howard Street	*182
		Fall Kill Creek	Upstream corporate limits	*182
			Downstream corporate limits	*123
			Upstream corporate limits	*127
Maps available for inspection at the City Clerk's Office, Municipal Building, Poughkeepsie, New York. Send comments to Honorable Thomas Apostolos, Mayor of the City of Poughkeepsie, Municipal Building, Poughkeepsie, New York 12601.				
New York	Rotterdam, town Schenectady County	Mohawk River	Downstream corporate limits	*232
			Upstream of State Route 103	*251
			Upstream corporate limits	*258
		Sandses Kill	Confluence with Mohawk River	*258
			Upstream of Interstate Route 90	*274
			Upstream corporate limits	*318
		Normans Kill	Downstream corporate limits	*276
			Upstream Giffords Church Road	*278
			Upstream corporate limits	*292
Maps available for inspection at the Town Hall, 1100 Vinewood Avenue, Rotterdam, New York. Send comments to Honorable John Kirvin, Supervisor of the Town of Rotterdam, Town Hall, 1100 Vinewood Avenue, Rotterdam, New York 12306.				
New York	Round Lake, village, Saratoga County	Ballston Creek	Confluence with Round Lake	*160
			Upstream of Goldfoot Road	*163
			Upstream corporate limits	*164
		Round Lake	Entire shoreline within community	*160
Maps available for inspection at the Village Hall, Burling Avenue, Round Lake, New York. Send comments to Honorable William Ryan, Mayor of Round Lake, Village Hall, Burling Avenue, P.O. Box 85, Round Lake, New York 12151.				
New York	Stillwater, village, Saratoga County	Schuyler Creek	Confluence with Hudson River	*63
			Upstream corporate limits	*94
		Hudson River	Downstream corporate limits	*82
			Upstream of dam	*92
			Upstream corporate limits	*94
Maps available for inspection at the Village Hall, School Street, Stillwater, New York. Send comments to Honorable David L. Rathbun, Mayor of the Village of Stillwater, 5 Neilson Avenue, Stillwater, New York 12170.				
Ohio	(V) Newtown, Hamilton County	Little Miami River	Within the corporate limits	*501
			About 2,700 feet upstream of confluence with McCullough Run	*502
			About 3,950 feet upstream of confluence with McCullough Run	*508
Maps available for inspection at the Village Hall, 3536 Church Street, Newtown, Ohio. Send comments to Honorable John Russell, Mayor, Village of Newtown, Village Hall, 3536 Church Street, Newtown, Ohio 45244.				
Ohio	(V) Plain City, Union and Madison Counties	Big Darby Creek	About 0.22 mile downstream of Conrail Just downstream of State Route 23	*919 *924
Maps available for inspection at the Village Hall, 213 South Chillicothe Street, Plain City, Ohio. Send comments to Honorable Robert Lombard, Mayor, Village of Plain City, Village Hall, 213 South Chillicothe Street, Plain City, Ohio 43084				

Proposed Base (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)
Pennsylvania	Silverdale, borough, Bucks County	Pleasant Spring Tributary	Downstream corporate limits	*402
			Upstream of State Route 152/Walnut Street	*418
			Downstream of State Route 113/East Main Street	*432
			Upstream corporate limits	*441
Maps available for inspection at the Borough Building, Silverdale, Pennsylvania. Send comments to Honorable Franklin Benner, President of the Silverdale Borough Council, 112 East Main Street, Silverdale, Pennsylvania 18962.				
Virginia	Bridgewater, town, Rockingham County	North River	Downstream corporate limits	*1,171
			Downstream of State Route 42	*1,176
		Dry River	Confluence of Dry River	*1,200
			Confluence with North River	*1,200
		Upstream corporate limits	*1,206	

Maps available for inspection at the Municipal Building, 112 North Main Street, Bridgewater, Virginia.

Send comments to Honorable Roland Aray, Mayor of the Town of Bridgewater, P.O. Box 72, Bridgewater, Virginia 22812.

(National Flood Insurance Act of 1968) (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued April 5, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-12004 Filed 5-5-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Notice of Public Hearing and Reopening of Comment Period on the Proposed Endangered Status and Critical Habitats for the Ash Meadows Amargosa Pupfish and the Ash Meadows Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearing and reopening of comment period on proposed rule.

SUMMARY: Notice is given that a public hearing will be held and the comment period reopened on a proposal of Endangered status and Critical Habitats for the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace.

This additional public hearing and comment period are to allow the acceptance of additional comments from local officials and the public.

DATES: The public hearing will be held at the Amargosa Community Center, Star Route 15, Amargosa, Nevada, at 7:00 p.m. on May 26, 1983. The comment period is reopened effective with the publication of this notice and closes on June 2, 1983.

ADDRESSES: The Amargosa Community Center is on Star Route 15 in Amargosa, Nye County, Nevada. Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232 (phone 503/231-6131) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (Phone 703/235-1975).

SUPPLEMENTARY INFORMATION: Emergency rules published in the Federal Register (47 FR 1995-1999) on May 10, 1982, listed the Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*) and the Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*), which occur in Ash Meadows, Nevada, as Endangered for a period lasting 240 days. That emergency rule expired on January 5, 1983. A

second emergency listing and a proposal of Endangered status and Critical Habitats for these two fish species under normal listing procedures were published concurrently on January 5, 1983 (48 FR 608-614). A public hearing on this proposal was held in Las Vegas, Nevada, on February 11, 1983. The comment period closed on February 22, 1983.

A second public hearing on the proposal will be held at the Amargosa Community Center, Star Route 15, Amargosa, Nevada, at 7:00 p.m. on May 26, 1983. The Service is also reopening the comment period, effective with the publication of this notice, on the proposal. The reopened comment period will close on June 2, 1983. This hearing and reopening of the comment period are intended to allow additional comment on the proposal.

The primary author of this notice is Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (phone 703/235-1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture), Wildlife.

Dated: May 2, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-12169 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 48, No. 89

Friday, May 6, 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

Agricultural Stabilization and Conservation Service

Proposed Determinations With Regard to the 1984 Wheat Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed Determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1984 crop of wheat: (a) The loan and purchase level; (b) the established (target) price; (c) the national program acreage (NPA); (d) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (e) whether an Acreage Reduction Program (ARP) should be established and, if so, the percentage of such reduction and the method to be used in establishing the acreage bases; (f) whether a set-aside program should be established and, if so, the percentage of such set-aside; (g) whether a Payment In Kind (PIK) Program should be established and, if so, the percentage of acreage reduction under the program; (h) whether to permit haying and grazing of conservation use acreage if an acreage reduction, set-aside or Payment In Kind Program is established; (i) whether advance deficiency payments should be made, and, if so, what percentage; (j) whether a land diversion program should be established and, if so, the extent of such diversion and the level of payment; (k) provisions of the farmer-owned reserve (FOR) program; (l) whether to require offsetting compliance if an Acreage Reduction Program is established; and (m) other provisions. These determinations are to be made pursuant to the provisions of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act") and the

Commodity Credit Corporation Charter Act.

EFFECTIVE DATE: Comments must be received on or before June 6, 1983 in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447-4146. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The title and number of the federal assistance programs to which this notice applies are: Title—Wheat Production Stabilization: Number 10.058 and Title—Commodity Loans and Purchases: Number 10.051, as found in the catalog of Federal Domestic Assistance.

Certain determinations set forth in this notice are required to be made by the Secretary for 1984 crop program purposes by August 15, 1983. In addition, it is necessary that the determinations for the 1984 crop be made in sufficient time to permit wheat producers to make adequate plans for the production of their crop. Therefore, it has been determined that the public comment period should be limited to a period of 30 days from the date of publication of this notice in the *Federal Register*. This will allow the Secretary sufficient time to properly consider the comments received before the final program determinations are made.

The following proposed program determinations with respect to the 1984 crop of wheat are to be made by the Secretary:

Proposed Determinations

a. *The Loan and Purchase Level for the 1984 Crop of Wheat.* Section 107B(a)

the 1949 act provides that the Secretary shall make available to producers loans and purchases for the 1984 crop of wheat at such level, not less than \$3.55 per bushel, as the Secretary determines will maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat. If the Secretary determines that the average price of wheat received by producers in any marketing year is not more than 105 percent of the level of loans and purchases for wheat for such marketing year, the Secretary may reduce the level of loans and purchases for the next marketing year by the amount the Secretary determines necessary to maintain domestic and purchases export markets for grain, except that the level of loans and purchases shall not be reduced by more than 10 percent in any year nor below \$3.00 per bushel. Loan and purchase levels being considered for the 1984 crop of wheat range from \$3.20 per bushel to \$3.55 per bushel.

Comments on the level of loans and purchase rate for the 1984 crop of wheat, along with supporting data, are requested from interested persons.

b. *The Established (Target) Price Level for the 1984 Crop of Wheat.* Section 107B(b)(1)(C) of the 1949 Act provides that the established price for wheat shall not be less than \$4.45 per bushel for the 1984 crop. Any such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable cost, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

In addition, the Department of Agriculture has proposed that Section 107B(b)(1)(c) of the 1949 Act be amended to provide that the minimum level for the established price for wheat will not be less than \$4.30 per bushel for the 1984 crop of wheat rather than the current statutory minimum of \$4.45 per bushel. This amendment to the 1949 Act has been requested because of the low rate of inflation for the past year. The established (target) price level under consideration for the 1984 wheat crop is the minimum statutory level—whether that level is \$4.45 per bushel or a lower statutory minimum level such as \$4.30 per bushel.

Comments are requested from interested persons as to the amount of the established (target) price for the 1984 crop of wheat along with supporting data.

c. *The National Program Acreage (NPA)*. Section 107B(c)(1) of the 1949 Act provides that the Secretary shall proclaim a NPA for the 1984 crop of wheat not later than August 15, 1983. The NPA shall be the number of harvested acres of wheat the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the 1984 crop) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for exports during the 1984/85 marketing year. If the Secretary determines that carryover stocks of wheat are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA first proclaimed if the Secretary determines it is necessary based upon the latest information. If an acreage reduction program is implemented for the 1984 crop of wheat, the NPA shall not be applicable to such crop.

The U.S. wheat stock objective, an amount judged to be our "fair" share of world wheat stocks, has been determined to be equal to approximately 6.2 percent of the world consumption of wheat (this represents the approximate 10-year average of the ratio of U.S. stocks to world consumption) or approximately 1,044 million bushels for the 1983/84 marketing year.

If required, the likely NPA for the 1984 crop of wheat would be:

- a. Estimated Domestic Use, 1984/85—900 mil. bu.
- b. Plus Estimated Exports, 1984/85—1500 mil. bu.
- c. Minus Imports—3 mil. bu.

d. Minus Stock Adjustment¹—396 mil. bu.

e. Divided by National Weighted Average Farm Program Payment Yield—34.3 bu/ac.

f. Equals 1984-Crop NPA—58.3 mil. ac.

No NPA was announced for the 1983 crop of wheat because the NPA provisions do not apply when an acreage reduction program is in effect. Comments on the NPA and the appropriate stocks level for the 1984 crop of wheat from interested persons, along with appropriate supporting data, are requested.

d. *Whether a Voluntary Reduction Percentage should be proclaimed and, if so, the Level of such Voluntary Reduction Percentage*. Section 107B(c)(3) of the 1949 Act provides that the 1984 individual farm program acreage of wheat eligible for payments shall not be reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer reduces the acreage of wheat planted for harvest on the farm from the 1984-crop established wheat acreage base by at least the percentage recommended by the Secretary in the proclamation of the NPA for the 1984 crop.

If an acreage reduction program is implemented for the 1984 crop of wheat, the voluntary reduction percentage shall not be applicable to such crop.

If required, the likely national recommended reduction percentage for the 1984-crop of wheat would be:

- a. 1984 Established Wheat Acreage Base—92.2 mil. ac.
- b. Minus 1984 Preliminary NPA—58.3 mil. ac.
- c. Equals Acreage Reduction Needed from Acreage Base—33.9 mil. ac.
- d. Divided by 1984 Wheat Acreage Base—92.2 mil. ac.
- e. Equals 1984-Crop Recommended Reduction Percentage—37 percent.

Comments from interested persons with respect to the reduction percentage, if any, are requested.

e. *Whether an Acreage Reduction Program (ARP) should be established and, if so the Percentage of such reduction and the method of establishing Acreage Bases*. Sections 107B(e) (1) and (2) of the 1949 Act provides that the Secretary may establish an acreage reduction program for the 1984 crop of wheat if the Secretary determines that the total supply of wheat, in the absence of such

a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such wheat acreage reduction program not later than August 15 prior to the calendar year in which the crop is harvested. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each wheat-producing farm. Producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat loans, purchases, and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage planted on the farm to wheat for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to wheat for harvest in the two crop years immediately preceding the year for which the determination is made. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres actually planted to wheat by (2) the number of acres authorized to be planted to wheat under a limitation established by the Secretary, shall be devoted to conservation uses in accordance with regulations issued by the Secretary.

The need for an acreage reduction program for wheat in 1984 will depend on the outcome of the 1983 crop of wheat. It is estimated that the 1983-crop plantings of wheat may be reduced by 20 to 25 percent from the previous year. Total production is projected to be 226.5 million bushels, down approximately 19 percent from the record 1982 wheat crop.

It is estimated that domestic use of wheat for 1983/84 will increase from 1982/83 (905 million bushels) to about 945 million bushels. The increase in the domestic use of wheat will be attributable to the increase in the use of wheat for feed since the wheat/feed grain ratio will likely favor wheat more than it did for the 1982-crop. Domestic food use of wheat is projected to increase by a small amount.

¹ a. Estimated 1984/85 Beginning Stocks—1440 mil. bu.

b. Minus 6.2 percent of 1983/84 World Consumption of Wheat—1044 mil. bu.

c. Equals Desired Stock Adjustment—396 mil. bu.

World wheat trade in 1982/83 is projected to decline modestly from the 1981/82 record levels of about 102 million metric tons as financial constraints and improved crops limit many countries' imports. U.S. wheat exports are projected to suffer a significant decline, not only reflecting the lower level of world trade but also increased competition from the other major wheat suppliers. The 1983/84 marketing year is not expected to see much increase in world wheat trade from this year's level. Many of the factors that inhibited growth in world wheat trade this year are expected to continue to influence 1983/84 trade. Since the competition from other exporters is likely to continue to be intense in 1983/84, U.S. wheat exports may remain at about the 1982/83 levels of 1500 million bushels. U.S. exports for 1983/84 may vary considerably depending on world wheat production, as well as the 1983-crop wheat outturn in the Soviet Union, China and India.

Given the 1983/84 outlook, ending carryover stocks of wheat may decrease by about 9 percent to just over 1.4 billion bushels. This amount is considered to be excessive.

With a program for the 1984 crop providing for a 20 percent ARP combined with a 10 percent to 30 percent PIK, the planted and harvested acreage for the 1984 crop of wheat are estimated to decrease from the acreage for the 1983 crop. With the decreased acreage and the use of trend yield estimates, production for the 1984 crop of wheat is estimated at just over 2.1 billion bushels. With this level of production and estimated beginning stocks of about 1.4 billion bushels, the total supply of wheat for 1984/85 is projected to decrease to 3.5 billion bushels from the level applicable to the 1983 crop, which is projected to be over 3.8 billion bushels. Domestic use in 1984/85 is projected to decrease slightly. This decrease will be largely due to decreased use of wheat as feed. Domestic food use is expected to increase, although only slightly.

World trade for 1984/85 is expected to remain similar to 1983/84. U.S. exports are estimated at 1500 million bushels, the same as for 1983/84 but less than the record exports in 1981/82.

Therefore, total demand for the 1984/85 marketing year is projected at 2.4 billion bushels. This would result in an ending carryover level of 1.1 billion bushels, about 23 percent lower than the previous year.

This outlook reflects the implementation of an acreage reduction program in conjunction with a PIK Program for the 1984 crop of wheat.

However, later crop developments throughout the world could materially change this outlook. The only ARP option under consideration at this time is a 20 percent ARP.

Interested persons are encouraged to comment on the need for an acreage reduction program for the 1984-crop of wheat, and the appropriate percentage of any such reduction. Interested persons are also encouraged to comment on the method for establishing wheat acreage bases for the 1984 crop of wheat.

f. Whether a Set-Aside Program should be established and, if so, What Percentage of such set-aside. Sections 107B(e) (1) and (3) of the 1949 Act provide that the Secretary may establish a Set-Aside Program for the 1984 crop of wheat if the Secretary determines that the total supply of wheat, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain a reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such Wheat Set-Aside Program not later than August 15 of the year prior to the calendar year in which the crop is harvested. If a set-aside program is announced, the producers on a farm must, as a condition of eligibility for loans, purchases, and payments, set-aside and devote to conservation uses an acreage of cropland equal to a specified percentage, as determined by the Secretary, of the acreage of wheat planted for harvest of the crop for which the set-aside is in effect. The set-aside acreage shall be devoted to conservation uses in accordance with regulations issued by the Secretary. If a Set-Aside Program is established, the Secretary may limit the acreage planted to wheat. Such limitation shall be applied on a uniform basis to all wheat-producing farms. The Secretary may make such adjustments in individual set-aside acreages as the Secretary determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, topography, and such other factors as the Secretary deems necessary.

Interested persons are encouraged to comment on the need for a 1984 Wheat Set-Aside program and, if so, the appropriate percentage of acreage to be reduced.

g. Whether to Allow Haying and Grazing of Conservation Use Acreage If an Acreage Reduction Program, Set-Aside Program, or Payment In Kind Program is established. Section

107B(e)(4) of the 1949 Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion.

With respect to the 1983-crop Wheat Acreage Reduction Program, producers were permitted to graze the conservation use acreage except during the six principal growing months, but were not permitted to harvest their wheat acreage for hay.

Under the Payment In Kind Program, producers who had planted acreages, which were later designated as conservation use acreage, to wheat before the program was announced on January 11, 1983 were permitted to cut such acreage for hay or to graze such acreage. Producers participating in the Payment In Kind Program who did not plant acreages to wheat before January 11, 1983, are permitted to graze the designated conservation use acreage, except during the six principal growing months.

If an Acreage Reduction, Set-Aside or Payment In Kind Program is announced for the 1984 crop of wheat, the only option under consideration would permit grazing of the conservation use acreage, except during the six principal growing months.

Interested persons are invited to comment on the provisions concerning the grazing and haying of conservation use acreage.

h. Whether a Land Diversion Program should be established and, if so, the Extent of Such Diversion and the level of Payments: Section 107B(e)(5) of the 1949 Act provides that the Secretary may make land diversion payments to producers of wheat, whether or not an acreage reduction or set-aside program for wheat is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. The amount payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary deems appropriate. In the past, land diversion payments have been made based upon an offer rate system (i.e. a specific rate per bushel multiplied by the farm program payment yield).

Interested persons are encouraged to address the need for a land diversion program either in lieu of, or in conjunction with, an acreage reduction or set-aside program and the

appropriate terms and conditions of any such land diversion program.

i. *Advance Deficiency Payments.* Section 107C of the 1949 Act provides that if the Secretary establishes an acreage reduction or acreage set-aside program for wheat and determines that deficiency payments will likely be made for such crop, the Secretary may make available advance deficiency payments to producers who agree to participate in such program. Payments shall be made available to producers in such amounts as the Secretary determines appropriate to encourage adequate participation in the 1984 wheat program, except that the payments shall not exceed an amount determined by multiplying (i) the estimated farm program acreage, by (ii) the farm program yield, by (iii) 50 percent of the projected payment rate, as determined by the Secretary.

In any case in which the deficiency payment which is to be made to a producer for a crop, as finally determined by the Secretary, is less than the advance deficiency amount paid to the producer, the producer shall refund the difference. If no deficiency payments are to be made to producers, the producers who received advance payments shall refund such advance payments. Any refund shall be due at the end of the marketing year.

If a producer fails to comply with the requirements under the acreage reduction or set-aside program involved after obtaining any available advance deficiency payment, the producer shall repay immediately the amount of the advance plus interest thereon as determined by the Secretary.

For the 1984 wheat program, the option under consideration is to make available to producers advance deficiency payments at 50 percent of the projected payment rate. Interested persons are requested to comment with respect to the need for, and the amount of, advance deficiency payments.

j. *Whether a Payment In Kind Program should be authorized and, if so, what percentage.* Sections 101(c), 103(g), 105B and 107B of the 1949 Act, as amended, authorize the Secretary to make land diversion payments to producers of wheat if the Secretary determines that the payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*) gives the Corporation broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets and remove and dispose of agricultural surpluses.

Although acreage reduction and land diversion programs announced for the 1983 crop of wheat required a producer to reduce the farm acreage base by 20 percent, the supply of wheat still greatly exceeded demand thus creating an undesirable surplus. Accordingly, the Department determined that the diversion of additional acreage from the production of 1983-crop wheat was necessary and that participating producers would receive payment in kind compensation. This acreage which was diverted under the payment in kind program was in addition to that acreage which the producer agreed to take out of production in accordance with the previously announced acreage reduction and cash land diversion programs for the 1983 crops.

With respect to the 1983 payment in kind program for wheat, a producer could enter into a contract with the Commodity Credit Corporation to divert not less than 10 percent nor more than 30 percent of the wheat acreage base established for the farm. In addition, producers could submit whole base bids for a contract to divert 100 percent of the farm acreage base. The bids which were submitted were based upon the percentage of the farm's wheat yield which the producer was willing to accept as payment in kind compensation. The number of whole base bids which were accepted for the 1983 wheat crop in each county was limited so that the total wheat acreage taken out of production under the payment in kind, acreage reduction, and land diversion program would not exceed 45 percent of the combined wheat acreage bases in that county.

With respect to contracts which were entered into by producers under the payment in kind program for the diversion of between 10 and 30 percent of the wheat acreage base established for the farm, the quantity of wheat which the producer was eligible to receive as payment in kind compensation was equal to the acreage which was diverted multiplied by the farm's wheat yield multiplied by 95 percent. With regard to contracts which were entered into by producers under the program involving whole base bids, the quantity wheat received as payment in kind compensation was determined in the same manner as the 10-30 percent contracts, except that the bid percentage was substituted for the 95 percent factor.

If the producer elected to participate in the payment in kind program for wheat and the producer had an outstanding quantity of wheat pledged as collateral for a farmer-owned reserve loan which was obtained before January

12, 1983, or for a regular price support loan, the producer was required to redeem a quantity of such loan collateral equal to that quantity of wheat which the producer was entitled to receive as payment in kind. The producer would then sell that quantity of wheat which has been redeemed to CCC for payment in kind purposes. In the case of farmer-owned reserve loans, the price at which CCC purchased the wheat from the producer was reduced by the amount of any unearned advance storage payments. Further, in the case of farm stored farmer-owned reserve loans, the purchase price included additional compensation to take account of long-term, storage-related commitments the producers may have undertaken. The quantity of wheat purchased by CCC in this manner would be made available to the producer as payment in kind. To the extent that a producer has no price support loan collateral which could be made available to CCC for payment in kind purposes, the producer would receive payment in kind compensation from warehouses designated by CCC.

The Department is considering implementing a payment in kind program for the 1984 crop of wheat which would be similar to the one that which was established for the 1983 crop. Any such program would be in addition to a 20 percent ARP. The percentages of the farm's production history which would be made available as payment in kind under such a program would range from 50 percent to 90 percent.

Interested parties are invited to comment on the need for a PIK Program in 1984 as well as the various program provisions. Comments should include supporting data.

k. *Provisions of the Farmer-Owned Reserve (FOR).* Section 110 of the 1949 Act provides that the Secretary shall formulate and administer a program under which producers of wheat will be able to store such wheat when it is in abundant supply and extend the time for its orderly marketing. The Secretary shall provide for original or extended price support loans at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the current level of price support provided for under the wheat program established in accordance with Section 107B of the 1949 Act. The program may provide for: (1) Repayment of such loans in not less than three years nor more than five years; (2) payments to producers for storage in such amounts and under such conditions as are determined to be appropriate to encourage producers to participate in the program; (3) a rate of

interest not less than the rate of interest charged CCC by the United States Treasury, except that the Secretary may waive or adjust such interest as the Secretary deems appropriate; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers before the market price for wheat has reached the trigger release level; and (5) conditions designed to induce producers to redeem and market the wheat securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the Commodity has attained a specified level (i.e., the "trigger release level"), as determined by the Secretary. The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcements, the Secretary shall specify the quantity of wheat to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of wheat. The Secretary may place an upper limit on the amount of wheat placed in the reserve but such upper limit may not be less than seven hundred million bushels of wheat.

The following options are under consideration with respect to the FOR for the 1984 crop of wheat: (a) Providing for an extended price support loan with a loan rate which is equal to the loan rate which is applicable to regular price support loans for the 1984 crop of wheat; (b) providing for a storage payment rate of 26.5 cents per bushel; (c) charging producers who have pledged wheat as collateral for a loan under the FOR interest for the first year at the prevailing rate the United States Treasury charges CCC for its borrowings and waiving interest for the second and third years; (d) providing for a trigger release level of \$4.65 per bushel or a trigger release level at the same level as the target price level for wheat; (e) providing that a producer may not place wheat into the FOR until after maturity of the nine-month regular price support loan; and (f) placing no upper limit on the quantity of wheat entering the reserve program.

Interested persons are encouraged to comment on these or other options dealing with the provisions of the farmer-owned wheat reserve program for the 1984 crop of wheat.

1. Whether to require Offsetting Compliance if an Acreage Reduction Program is established. Section 107B(g) of the 1949 Act provides that the

Secretary may issue such regulations as the Secretary determines to be necessary to carry out the wheat program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they had an interest were either in compliance with the program requirements or the acreages of wheat planted to harvest on each of such farms did not exceed the wheat acreage bases which were established for such farms.

Offsetting compliance was not in effect for the 1983 crop. Interested persons are encouraged to comment on the need for offsetting compliance for the 1984-crop of wheat if an acreage reduction program is established.

m. Other Related Provisions. A number of other determinations must be made in carrying out the wheat loan and purchase programs such as: (a) commodity eligibility; (b) premiums and discounts for grades, classes, and other qualities; (c) establishment of county loan and purchase rates; and (d) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Signed at Washington, D.C. on May 3, 1983.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 83-12167 Filed 5-5-83; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Lewis and Clark National Forest Grazing Advisory Board; Meeting

The Lewis and Clark National Forest Grazing Advisory Board will meet in Great Falls, Montana, at 6:00 p.m. on Wednesday, June 1, 1983, at the Black Angus (basement). The meeting will start with a no-host dinner followed by a guest speaker and business meeting.

The purpose of the meeting is to review the Lewis and Clark National Forest's range management program for fiscal year 1983 and proposals for 1984. Guest speaker will be Jim Story, Research Associate in Entomology at the Western Agricultural Research center at Corvallis, Montana. Mr. Story will present an update of the state of the art in biological weed control in Montana.

An open discussion will also be held on topics of interest to the Advisory Board, and followup discussion in topics raised in the December 16 meeting.

The meeting will be open to the public. Persons who wish to attend should notify George P. Rath, Chairman of the Board, P.O. Box 478, Roundup, Montana 59072, Phone 323-1084, or Wayne Phillips, Acting Secretary, Lewis and Clark National Forest, Box 871, Great Falls, Montana 59403, Phone 727-0901. Written statements may be filed with the Board before or after the meeting.

Dated: April 28, 1983.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 83-12165 Filed 5-5-83; 8:45 a.m.]

BILLING CODE 3410-11-M

Soil Conservation Service

Custer County Roadside Erosion Control CAT RC&D Measure; Oklahoma; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Custer County Roadside Erosion Control Critical Area Treatment (CAT) RC&D Measure, Custer County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, State Office, Agricultural Center Building, Stillwater, Oklahoma 74074, telephone 405-624-4360.

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, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns stabilizing eroding areas along county roadsides. The planned works of improvement

include construction of a concrete channel liner, grassed waterway and concrete lined outlet along the roadway to protect the borrow ditch from erosion.

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 Roland R. Willis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*.

Billy R. Littlefield,

Assistant State Conservationist.

April 28, 1983.

[FR Doc. 83-12159 Filed 5-5-83; 6:45 am]

BILLING CODE 3410-16-M

Pemberton Historical Park; Public Water Based Recreation RC&D Measure, Maryland

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 Pemberton Historical Park Public Water Based Recreation RC&D Measure, Wicomico County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, 4321 Hartwick Road, College

Park, Maryland 20740, telephone 301-344-4180.

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. Gerald R. Calhoun, 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 to develop approximately one-half of a 61 acre site for recreational and educational purposes. The planned works of improvement include establishment of an access road into the park and installation of a nature trail, contact building, picnic area, pond, ford, landing, parking lot, and landscaping.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Gerald R. Calhoun. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

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 28, 1983.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A-85 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Gerald R. Calhoun,

State Conservationist.

[FR Doc. 83-12055 Filed 5-5-83; 8:45 a.m.]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 p.m. to 5:00 p.m. Tuesday, May 10, 1983, to take place in the Main Hall of the Disabled American Veterans (DAV) National Service and Legislative headquarters, 807 Maine Avenue, S.W., Washington, D.C. 20024.

Items to be considered are as follows: election of the ATBCB Chairperson and Vice-Chairperson; ATBCB Organization and Procedures and ATBCB Delegates and Authorities; status report on ATBCB retreat; safe transport of disabled air travelers; and discussion on Telecommunication Devices for the Deaf (TDDs) in transit facilities.

DATE: May 10, 1983-1:00 p.m.-5:00 p.m.

ADDRESS: Main Hall, Disabled American Veterans (DAV) National Service and Legislative Headquarters, 807 Maine Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Director of Public Information (202) 245-1591 (voice or TDD).

SUPPLEMENTARY INFORMATION: Committee meetings of the ATBCB will be held on Monday, May 9, and Tuesday morning, May 10, in the Hubert Humphrey Building. Contact Larry Allison, Director of Public Information (202) 245-1591 (voice or TDD), for further information.

Wm. Bradford Reynolds,
Chairperson.

[FR Doc. 83-12027 Filed 5-5-83; 6:45 am]

BILLING CODE 4000-07-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.) Week Ended April 29, 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.

Date filed	Docket no.	Description
April 27, 1983	41441	Denham Aircraft Services Corp. II, c/o Stephen A. Alterman, 1050 Seventeenth Street, NW., Suite 1201, Washington, D.C. 20036. Application of Denham Aircraft Services Corp. II pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authority to engage in the overseas and foreign charter air transportation of:

Date filed	Docket no.	Description
Apr. 27, 1983	41442	a. Persons, property and mail between any point in any state or the District of Columbia or any territory or possession of the United States; and (i) Points in Canada; (ii) Points in Mexico; (iii) Points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place in the Gulf of Mexico or the Caribbean Sea; (iv) Points in Central and South America; (v) Points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; (vi) Points in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as, and including, India. b. Persons and property pursuant to contracts with the Department of Defense. The aircraft to be used in the Denham charter operation will be DC 8-62s. Conforming Applications, Motions to Modify Scope and Answers may be filed by May 25, 1983. Jet Way, Inc., c/o Michael J. Mills, Frasco, Hackett & Durkin, 505 North Woodward Avenue, Suite 3800, Bloomfield Hills, Michigan 48013. Application of Jet Way, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to provide foreign air transportation of persons, property and mail as follows: (a) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in Canada, on the other; (b) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in Mexico, on the other; (c) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place located in the Gulf of Mexico or the Caribbean Sea, on the other hand; (d) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America on the other hand; (e) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and American Samoa, Guam, Johnson Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand; (f) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand. Conforming Applications, Motions to Modify Scope and Answers may be filed by May 25, 1983. British American Air, Inc., c/o Jerry W. Ellinghouse, Potter, Ellinghouse & Miner, 5900 Sepulveda Boulevard, Suite 550, Van Nuys, California 91411. Amended Application of British American Air, Inc. pursuant to Section 401, (d)(1) of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled foreign air transportation of passengers, property and mail, as follows: Between points with the United States of America including, but not limited to, the following co-terminal points: Washington, D.C., Baltimore, Md., Philadelphia, Pa., Reno, Nevada, Las Vegas, Nevada, Atlantic City, New Jersey, Burbank, California, Hilo, Hawaii, Boston, Ma., Los Angeles, Ca., Long Beach, Ca., San Francisco, Ca., Ontario, Ca., and points in the following countries: United Kingdom, including Hong Kong; The Benelux countries: The Netherlands, including Luxembourg; Belgium, including Brussels. Answers may be filed by May 26, 1983.
Apr. 28, 1983	41321	Simmons Airlines, Inc., c/o Michael R. Fournier, 11 East Goethe Street, Chicago, Illinois 60610. Second Amendment to the Application of Simmons Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations. (Additional Information) Answers may be filed by May 27, 1983.
Apr. 29, 1983	41233	Simmons Airlines, Inc., c/o Michael R. Fournier, 11 East Goethe Street, Chicago, Illinois 60610. Second Amendment to the Application of Simmons Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations. (Additional Information) Answers may be filed by May 27, 1983.

Phyllis T. Kaylor,
Secretary.

[PR Doc. 83-12218 Filed 5-5-83; 8:45 a.m.]

BILLING CODE 6320-01-M

CIVIL AERONAUTICS BOARD

[Docket No. 41077]

American International Airways, Inc.; Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on May 24, 1983, at 10:00 a.m. (local time) in Room 540, 2120 L Street, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., May 3, 1983.

John N. Vittono,
Administrative Law Judge.

[PR Doc. 83-12214 Filed 5-5-83; 8:45 a.m.]

BILLING CODE 6320-01-M

[Docket No. 41244]

First American Bank of Virginia; Enforcement Proceeding; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on July 12, 1983, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1925 Connecticut Ave., N.W., Washington, D.C., before the

undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., April 29, 1983.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[PR Doc. 83-12215 Filed 5-5-83; 8:45 a.m.]

BILLING CODE 6320-01-M

[Docket No. 41422]

Tower Air Inc., Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on June 7, 1983, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., N.W., Washington, D.C. before the undersigned chief Administrative Law Judge.

Dated at Washington, D.C. April 29, 1983.

Elián C. Rodriguez,
Chief Administrative Law Judge.

[PR Doc. 83-12216 Filed 5-5-83; 8:45 a.m.]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Delaware Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 3:00 p.m. and will end at 5:00 p.m., on June 2, 1983, at the J. Caleb Boggs Federal Office Building, Ninth and King Street, in Room 3207, Wilmington, Delaware 19801. The purpose of this meeting is to receive reports and instruct subcommittees on program planning, and discuss plans for a statewide civil rights conference.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Louise T. Conner, 1214 Faun Road, Graylyn Crest, Wilmington, Delaware 19803, (302) 738-2923 or the Mid-Atlantic Regional Office, 2120 L Street, North West, Room 510, Washington, D.C. 20037, (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 2, 1983.
 John I. Binkley,
Advisory Committee Management Officer.
 [FR Doc. 83-12132 Filed 5-5-83; 8:45 am]
 BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 12-83]

Proposed Foreign-Trade Zone— Raleigh/Durham, North Carolina; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, a six-county inter-governmental association and a North Carolina public corporation, requesting authority to establish a general-purpose foreign-trade zone at sites in Durham County, Granville County and Raleigh, North Carolina, adjacent to the Durham Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 29, 1983. The applicant is authorized to make this proposal under Chapter 55C of the General Statutes of North Carolina.

The proposed zone covers 387 acres at three sites in the Raleigh/Durham metropolitan area. All sites would be operated by International Ventures Limited, a subsidiary of Davidson and Jones Development Company. The primary site (Site 1) involves the Imperial Center, a planned industrial park of 250 acres at New Page Road and I-40, adjoining the Research Triangle Park in Durham County. This facility is 4 miles from Raleigh/Durham Airport.

Site 2 involves the Northside Distribution Center Industrial Park, covering 27 acres at Front Street and Industrial Drive, near U.S. 1/U.S. 64, in Raleigh. Existing warehouse facilities are available at this site for initial zone operations. Site 3 is at the Woodland Industrial Park, covering 110 acres at Highway 56 and I-85, Granville County.

The application contains evidence of the need for zone procedures in the Raleigh/Durham area. A number of firms have expressed an interest in using the proposed zone for warehousing, packaging and assembly of power tools, industrial supplies, furniture, electronic and telecommunication products, musical instruments, pharmaceuticals, and copper frames. No approvals are being requested for manufacturing at this time.

Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Charles W. Winwood, Director (Inspection and Control), U.S. Customs Service, Southeast Region, 55 S.E. 5th Street, Miami, FL 33131; and Colonel Robert K. Hughes, District Engineer, U.S. Army Engineer District, Wilmington, P.O. Box 1890, Wilmington, N.C. 28402.

As part of its investigation, the examiners committee will hold a public hearing on June 2, 1983, beginning at 8:45 a.m., in the Conference Room of the Raleigh/Durham Airport Authority Building, adjacent to the terminal at the Raleigh/Durham Airport, Morrisville, North Carolina.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by May 27. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 2, 1983.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Raleigh/Durham Airport, Rt. 1, Box 508, Morrisville, NC 27560
 Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, N.W., Washington, D.C. 20230.

Dated: May 2, 1983.

John J. Da Ponte, Jr.,
Executive Secretary.
 [FR Doc. 83-12169 Filed 5-5-83; 8:45 am]
 BILLING CODE 3510-25-M

International Trade Administration

Sugar Content of Certain Articles From Australia; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On March 17, 1983, the Department of Commerce published in the *Federal Register* the preliminary results of its administrative review of the countervailing duty order on the sugar content of certain articles from Australia. The review covered the period January 1, 1982 through December 31, 1982.

Interested parties were invited to comment on the preliminary results. We received no comments. Based upon our analysis, the final results of the review are the same as those presented in the preliminary results.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Josephine Russo or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 11308) the preliminary results of its administrative review of the countervailing duty order on the sugar content of certain articles from Australia (T.D. 39541, March 24, 1983). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are "approved fruit products" and "other approved products" produced in Australia. The current list of "approved fruit products" includes the following items: jams, canned fruits, citrus peel, crystallized (or glace) fruits, certain fruit cordials and fruit juices containing not less than 25 percent pure Australian fruit juice. This list of "other approved products" currently includes: Alcoholic beverages, biscuits, cakes, puddings, pastries and similar mixtures and ingredients used to make them, chemicals derived from cane sugar by hydrolysis, chemical preparations used as inhibitors or stabilizers, condiments, confectionary, desserts and ingredients used to make them, drink powders and crystals, essences and flavorings, ice block mixtures, leather, maple syrup, medicines and drugs, mixtures used to make icings, fillings, dressings and other foods, processed cereal foods or vegetables, processed egg products, processed milk products, quick frozen fruits, soft drinks, soups, spreads,

sweetened fruit pulp and other fruit products which are not "approved fruit products." Exceptions to the above are pure sugar and pure icing sugar (that is, not mixed with other manufacturing ingredients), golden syrup, treacle and molasses. These are regarded as sugar and sugar syrups.

The review covers the period January 1, 1982 through December 31, 1982 and is limited to the program of rebate payments made through the Export Sugar Rebate System.

Final Results of the Review

Interested parties were invited to comment on our preliminary results. We received no comments. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review.

The Department will instruct the Customs Service to assess countervailing duties of Aus. \$63.98 per metric ton of sugar content for approved fruit products and Aus. \$74.15 for other approved products on shipments exported on or after January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before September 9, 1982. On September 10, 1982, the International Trade Commission ("the ITC") notified the Department that the Australian government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties at the prevailing deposit rates at the time of entry on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 10, 1982, and on or before the ITC's notification of its determination.

Further, as provided for by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, of Aus. \$63.98 per metric ton of sugar content on approved fruit products and Aus. \$74.15 on other approved products on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department is now beginning the next administrative review of the order. The suspension of liquidation previously ordered will continue for all entries of this merchandise entered, or withdrawn

from warehouse, for consumption on or after September 10, 1982.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 29, 1983.

Gary N. Horlick,
Deputy Assistant Secretary for Import Administration.

(PR Doc. 83-12162 Filed 5-5-83; 8:45 am)

BILLING CODE 3510-25-M

Certain Stainless Steel Sheet and Strip Products From the Federal Republic of Germany; 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 and strip products from the Federal Republic of Germany (FRG) 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: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or David Layton, Office of Investigations, Import Administration, United States Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230 (202-377-5288) or (202-377-0160).

SUPPLEMENTARY INFORMATION:

Case History

On April 26, 1982, we received a petition filed by counsel on behalf of eleven United States specialty steel producers and on behalf of the United Steel Workers 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 the FRG of certain stainless steel sheet and strip products 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

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 it contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our action and initiated the investigations on May 17, 1982 (47 FR 22132). On June 10, 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 these cases 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 November 22, 1982 (47 FR 41800).

Questionnaires were presented to Krupp and Thyssen on June 3, 1982. Their initial responses were received on August 9 and 13, 1982. VDM requested a questionnaire on June 25, 1982, and submitted its response on August 13, 1982. Our review of the responses revealed numerous deficiencies, and we requested additional information and non-confidential summaries which were submitted in part on various dates from October 4 through November 18, 1982.

Some deficiencies were not corrected for us to use the responses in our preliminary determinations. Therefore, we based our preliminary determinations of November 22, 1982 on the best information available, which was contained in the petition.

On December 2, 1982, Krupp commenced an action in the Court of International Trade to enjoin the Department from publishing its preliminary determinations. The Court issued an order temporarily suspending publication of this notice. The Court dismissed Krupp's action on December 13, 1982, and the notice was published in the Federal Register on December 17, 1982.

Our notice of preliminary determinations provided interested parties an opportunity to submit views orally and in writing. We did not hold a public hearing, because the only interested party requesting a hearing later withdrew its request.

On February 3, 1983, we published a notice extending the period for making our final determinations by 60 days until May 2, 1983, at the request of exporters who accounted for a significant proportion of exports of this merchandise, in accordance with section 735(a)(2) of the Act (48 FR 4864).

On January 17, 18, and 21, 1983, we verified the response of VDM. On January 19 and 20, 1983, we verified the response of Krupp. On January 24 through 26, 1983, we verified the response of Thyssen. Our verification revealed further deficiencies in the responses of all three companies, and we requested clarifying information from VDM and Krupp. We also requested additional and corrected information from Thyssen. We received the information requested from VDM on February 1, 1983, from Krupp on February 25, 1983, and from Thyssen on February 28, 1983.

We verified Thyssen's exporter's sales price portion of the response on February 14 and 15, 1983, at Thyssen Specialty Steel, Inc., in Chicago. We verified Krupp's exporter's sales price portion of the response on February 16 and 17, 1983, at Krupp Specialty Steel, Inc., in Chicago. VDM does not have exporter's sales price sales. We verified a portion of its response on February 23, 1983, at VDM Technologies Corporation in Rye, New York.

In addition we again verified from March 28 through 31, 1983, in the FRG, the material resubmitted by Thyssen in response to our request.

On April 6 and 7, 1983, we requested additional information from Thyssen, which we received before the April 13 deadline. We verified this information on April 14, 1983, at Thyssen Specialty Steel, Inc., in Chicago.

Scope of Investigations

The certain stainless steel sheet and strip products covered by these investigations are:

- Cold-rolled stainless steel sheet.
- Cold-rolled stainless steel strip.
- Hot-rolled stainless steel sheet.
- Hot-rolled stainless steel strip.

For a further description of these products see the appendix appearing with this notice.

Since Krupp, Thyssen and VDM manufacture and export virtually all the certain stainless steel sheet and strip products exported from the FRG to the United States, we limited our investigations to them.

These investigations cover the period from July 1 to December 31, 1981, for purchase price sales and from October 1, 1981 to March 31, 1982, for exporter's sales price transactions.

None of the manufacturers have had sales of hot-rolled stainless steel sheet and strip during the period of investigation. In absence of assurances that they will not sell hot-rolled stainless steel 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 stainless steel sheet as we did for cold-rolled stainless steel sheet and the same weighted-average margin for hot-rolled stainless steel strip as we did for cold rolled stainless steel strip.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared United States price with the foreign market value.

United States Price

For Thyssen and Krupp, we used purchase price to represent United States price for sales made to unrelated purchasers prior to importation into the United States, and exporter's sales price for sales made to unrelated purchasers after importation into the United States in accordance with section 772 of the Act. In the case of VDM, we used purchase price to represent United States price, because the merchandise was sold to unrelated purchasers prior to importation into the United States.

We calculated the purchase price based on the f.o.b., c. & f., c.i.f., and c.i.f., delivered, duty paid, packed price to unrelated purchasers. Where appropriate, we made deductions for foreign inland freight, foreign inland insurance, ocean freight and marine insurance, United States duty, customs brokerage, United States inland freight, and United States inland insurance.

Where we used exporter's sales price, we deducted, where appropriate, credit, warranty, quality control inspection and works certificate expenses, cutting costs, commissions, and other selling expenses incurred in the United States. We also deducted, where appropriate, the value of a cutting process incurred in the United States.

We did not deduct an amount erroneously reported by Krupp as commissions.

Regarding sales by Thyssen to an unrelated firm in Switzerland, we have concluded from the information submitted by Thyssen that it knew or should have known that all or part of the merchandise was destined for the United States at the time of purchase by the Swiss firm. Therefore, we are calculating the United States price of these sales based on the purchase price of the Swiss firm.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales. 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 home market prices for all three manufacturers were based on delivered, packed prices to unrelated purchasers. From these prices we deducted, where appropriate, inland freight, inland insurance, discounts and rebates. We made adjustments, where appropriate, for credit, warranty, quality control inspection and works certificate expenses, cutting costs, and costs of materials, labor, and directly related factory overhead associated with differences in the merchandise.

Where we used exporter's sales price, we treated credit, warranty, quality control inspection, and works certificate expenses, and cutting costs as deductions, where appropriate, and also deducted indirect selling expenses to offset United States selling expenses.

Krupp: Krupp made a claim for an adjustment for physical differences in the merchandise related to extra specification costs. This adjustment relates to extra specifications—e.g. higher finish cost and greater tensile strength cost—required by purchasers in the home market for the same grades of steel. We did not allow the following portions of this claim: conventional casting versus continuous casting cost, visual inspection costs, or technical services element costs, because they are not directly related to differences in the physical characteristics of the merchandise as required by § 353.16 of the Commerce Regulations.

We allowed the remainder of this claimed adjustment for the period through October 1, 1981, the effective date of new pricing regulations of the European Economic Communities which prevented Krupp from charging for specification differences on the same grades of steel.

We did not allow as a circumstance of sale adjustment an expense for technical services, because Krupp did not demonstrate that this claim was directly related to the sales of the merchandise covered by these investigations as required by § 353.15 of the Commerce Regulations.

Thyssen: We allowed a claim for after-sale warehousing expenses, because Thyssen demonstrated that these expenses were incurred after the sale by specific contractual agreement. We did not allow a claim for warehousing costs incurred in sales from inventory, because we do not consider these costs directly related to the sales under consideration as

required by § 353.15 of the Commerce Regulations.

For the same reason as stated for Krupp, we did not allow as a circumstance of sale adjustment Thyssen's claim for an expense for technical services.

Regarding the sales by Thyssen through a Swiss firm, we calculated the foreign market value based on Thyssen's home market price in the FRG of similar merchandise.

VDM: We did not allow as circumstances of sale adjustments claims for technical and laboratory services, credit costs for cash discounts, and selling expenses, because VDM did not demonstrate that these claims were directly related to the sales of the merchandise covered by these investigations as required by § 353.15 of the Commerce Regulations.

Verification

In accordance with section 776(a) of the Act, we verified all of the information used in making these determinations. We were granted access to the books and records of Thyssen, Krupp, VDM, Thyssen Specialty Steel, Inc., Krupp Specialty Steel, Inc., and VDM Technologies, Inc. We used standard verification procedures, including examination of accounting records, financial statements, and selected documents containing relevant information.

Result 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 German companies during the investigative period. For cold-rolled stainless steel sheet, margins were found on 73 percent of metric tons sold. The margins ranged from .05 percent to 108.37 percent. The overall weighted-average margin on these sales was 7.4 percent. For cold-rolled stainless steel strip, margins were found on 29 percent of metric tons sold. The margins ranged from .07 percent to 243.72 percent. The overall weighted-average margin on these sales was 2.98 percent.

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 the FRG 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 from the FRG. The United States Customs Service will continue to require the posting of a cash deposit, bond, or other security in amounts of the following overall weighted-average margins for certain stainless steel sheet and strip. The bond or cash deposit requirements established in our preliminary determinations of December 17, 1982, are no longer in effect.

	Weighted-average margins
Cold-rolled stainless steel sheet:	
Krupp.....	7.76
Thyssen.....	6.47
VDM.....	7.40
All Other Manufacturers/Producers/Exporters.....	7.40
Cold-rolled stainless steel strip:	
Krupp.....	3.03
Thyssen.....	1.49
VDM.....	4.72
All Other Manufacturers/Producers/Exporters.....	2.98
Hot-rolled stainless steel sheet:	
Krupp.....	7.76
Thyssen.....	6.47
VDM.....	7.40
All Other Manufacturers/Producers/Exporters.....	7.40
Hot-rolled stainless steel strip:	
Krupp.....	3.03
Thyssen.....	1.49
VDM.....	4.72
All Other Manufacturers/Producers/Exporters.....	2.98

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 the FRG 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. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Lawrence J. Brady,
Assistant Secretary for Import Administration.
May 2, 1983.

Appendix—Product Description: Certain Stainless Steel Sheet and Strip Products

For the purposes 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 on 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 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 strip 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 width. Cold-rolled stainless steel strips, including razor blade strip, not over 0.01 inch in thickness is not included in these investigations.

[FR Doc. 83-12135 Filed 5-5-83; 8:45 am]

BILLING CODE 3510-25-M

[A-427-070]

Antidumping; Kraft Condenser Paper From France; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping

finding and tentative determination to revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on kraft condenser paper from France. The review covers the one known exporter of the merchandise to the United States, Papeteries Bollore, S.A., and the period September 1, 1981 through August 31, 1982. The review indicates the existence of *de minimis* margins.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of the sales during the period of review. The Department has also tentatively determined to revoke the finding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3003/5496.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 6580) the final results of its last administrative review of the antidumping finding on kraft condenser paper from France (44 FR 54696, September 21, 1979) and announced its intent to conduct the next administrative review by the end of September 1983. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of kraft condenser paper meaning capacitor tissue or condenser paper containing 80 percent or more by weight chemical sulphate or soda wood pulp based on total fiber content. This merchandise is currently classifiable under items 252.4000, 252.4200, and 258.3080 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French kraft condenser paper to the United States, Papeteries Bollore, S.A., and the period September 1, 1981 through August 31, 1982.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price, as appropriate, as defined in section 772 of the Tariff Act. Purchase price and exporter's sales price were based on the delivered, duty-paid, packed price to the first unrelated purchaser, with deductions, where applicable, for ocean freight, insurance, foreign and U.S. inland freight, customs duties, and clearance charges. In addition, in exporter's sales price situations we deducted U.S. selling expenses in accordance with § 353.10 of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market prices were based on the packed, delivered prices to unrelated purchasers with adjustments, where applicable, for foreign inland freight, differences in credit costs, and directly related selling expenses, in accordance with § 353.15 of the Commerce Regulations. We also made adjustments, where applicable, for differences in packing costs and differences in physical characteristics, in accordance with § 353.18 of the Commerce Regulations. Further, when we used exporter's sales price as a basis of comparison, we made an adjustment for indirect selling expenses up to the amount of the actual selling expenses incurred in the U.S. market, in accordance with § 353.15(c) of the Commerce Regulations. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination to Revoke

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a 0.06% margin exists for Papeteries Bollore, S.A., for the period September 1, 1981 through August 31, 1982.

The Department has concluded that, for the period September 1, 1980 through August 31, 1982, Papeteries Bollore, S.A. had *de minimis* margins.

As provided for in § 353.54(e) of the Commerce Regulations, Papeteries Bollore, S.A. has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding (as an order) if circumstances develop which indicate that kraft condenser paper manufactured and/or exported to the

United States by Papeteries Bollore, S.A. is being sold at less than fair value.

Therefore, we tentatively determine to revoke the antidumping finding on kraft condenser paper from France. If this revocation is made final it will apply to all unliquidated entries of kraft condenser paper entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase or export dates, as applicable, during the time period involved. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisal instructions directly to the Customs Service.

This administrative review, tentative determination to revoke, and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

April 28, 1983.

[FR Doc. 83-12230 Filed 5-5-83; 8:45]

BILLING CODE 3510-25-M

[A-583-081]

Antidumping; Polyvinyl Chloride Sheet and Film From Taiwan; Final Results of Administrative Review and Revocation in Part of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review and revocation in part of antidumping finding.

SUMMARY: On November 10, 1982, the Department of Commerce published the

preliminary results of its administrative review, intent to revoke in part, and tentative determination to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers the 47 known exporters and one third-country reseller of this merchandise to the United States currently covered by the finding and the period June 1, 1980 through either May 31, 1981, or June 30, 1981.

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. We received comments from two of the exporters. After analysis of the comments, we have made changes in the list of companies subject to revocation or tentative determination to revoke.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Betty H. Laxague or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: 202-377-3601.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1978, the Treasury Department published in the *Federal Register* an antidumping finding with respect to polyvinyl chloride sheet and film from Taiwan (T.D. 78-219, 43 FR 28457). On November 10, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 50937) the preliminary results of its last administrative review, intent to revoke in part, and tentative determination to revoke in part. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of unsupported, flexible, calendered polyvinyl chloride ("PVC") sheet, film, and strips, over 6 inches in width and over 18 inches in length, and at least 0.002 inch but not over 0.020 inch in thickness, currently classifiable under item numbers 771.4312 and 774.5590 of the Tariff Schedules of the United States Annotated.

The review covers the 47 known exporters and one third-country (Hong Kong) reseller to the United States of PVC sheet and film from Taiwan currently covered by the finding and the period June 1, 1980 through either May 31, 1981, or June 30, 1981.

Analysis of Comments Received

Interested parties were invited to comment on our preliminary results. We received written comments from two of the firms, Nan Ya Plastics Corporation

("Nan Ya") and Cathay Plastic Industry Co., Ltd. ("Cathay").

Comment 1: Nan Ya requested that certain Taiwanese trading companies, which to the best of its knowledge have exported only Nan Ya manufactured materials and have never been found to have sold at less than fair value, should be listed in the final results as having no margins and as firms which, like Nan Ya, will not be subject to future section 751 reviews for sales of merchandise manufactured by Nan Ya.

Department's Position: Twenty-one firms listed below have had no sales at less than fair value for at least a two-year period and have shown through direct correspondence with the Department that they have exported only Nan Ya manufactured materials. As we indicated in our preliminary results, this partial revocation applies to merchandise produced and sold by Nan Ya directly to the United States or indirectly through a trading company. We therefore are revoking the finding with regard to these twenty-one firms, together with Nan Ya, for merchandise manufactured by Nan Ya.

In addition to the twenty-one firms, Nan Ya listed six firms whom it believed qualified for revocation. These six firms have not responded to one or more of our questionnaires during the past two years and have, therefore, been assigned a best information assessment rate. These firms have now informed us by letter that in the past they only shipped merchandise manufactured by Nan Ya, they only exported to the United States, and that they did not in fact ship during the periods for which we used best evidence. We will defer our decision on revocation for these six firms until we verify the status of these firms vis-a-vis Nan Ya. These six firms are:

Bueno Manufacturing Co.
Chien YW Enterprises Corp.
Jamelec Corp.
Taiwan Upholstery Furniture Export Supplies Ltd.
Turner Enterprises Co.
Wen Fung Industries Co., Ltd.

Comment 2: Nan Ya informed us that one firm, Jump International Industries Corp., which was listed in our preliminary results as only shipping merchandise not covered by the finding, does ship covered merchandise, although only merchandise manufactured by Nan Ya. In addition, it stated that Turner Enterprises Co., listed in our preliminary results as having gone out of business, is not out of business.

Department's Position: For purposes of our final results we are including both firms. We are revoking the finding with regard to Jump International Industries

Corp. along with Nan Ya (see Comment 1).

Comment 3: Cathay requested that two trading companies who have exported only Cathay manufactured materials and who, in Cathay's opinion, have never been found to have sold at less than fair value should be covered by the tentative determination to revoke with regard to Cathay.

Department's Position: These firms have not responded to one or more of our questionnaires during the past two years and have, therefore, been assigned a best information assessment rate. Cathay argued that these firms did not ship during the periods for which we used best information. We will defer our decision on tentative revocations for these two firms until we verify their status vis-a-vis Cathay. These two firms are:

Formosa Shoe Industry
Lot Heng (PVC Co.), Ltd.

In our preliminary results we indicated that merchandise exported by Progress Plastics Co., Ltd. was not subject to the finding. We have now independently determined that, although the firm had no shipments for the period of this review, it did in the past export merchandise which is subject to the finding. We will, therefore, include this firm in our review using the best information available, which is the most recent rate for the firm. We have further determined that merchandise exported by Fuji Industries Co. (Taiwan), Ltd. and Grand Asia Plastic Industry, Inc. is actually polyethylene not subject to the finding. We, therefore, will not cover these two firms in this review or future section 751 reviews, unless they begin shipping the covered merchandise.

Final Results of Review and Revocation in Part

As a result of analysis of the comments received and other analysis, we determine that the following margins exist:

EXPORTER	Time period	Margin (percent)
Apex International Corp.	6/1/80-6/30/81	0
Asiam International Inc.	6/1/80-5/31/81	11.37
BL & GY International Co., Ltd.	6/1/80-6/30/81	0
Brave Dragon Industries Ltd.	6/1/80-5/31/81	15.9
Bueno Manufacturing Co.	6/1/80-6/30/81	0
Cathay Plastic Industry Co., Ltd.	6/1/80-6/30/81	0
Cheng Hsing Corp.	6/1/80-6/30/81	0
Chia Shiu Enterprises Corp.	6/1/80-6/30/81	0
Chien YW Enterprises Corp.	6/1/80-6/30/81	0
Collins Co., Ltd.	6/1/80-5/31/81	15.9
Diamond Shamrock Trading Corp.	6/1/80-5/31/81	0
Digest International Development Corp.	6/1/80-6/30/81	0

Exporter	Time period	Margin (percent)
Dirksen Inc.	6/1/80-6/30/81	0
Ellsin Inc.	6/1/80-6/30/81	0
Essex Sporting Goods	6/1/80-5/31/81	5.9
Everlasting Manufacturing Inc.	6/1/80-6/30/81	0
Fashion Plastics Fabr. Co., Ltd.	6/1/80-5/31/81	5.9
Fomosa Shoe Industry	6/1/80-5/31/81	0
Gela & Co.	6/1/80-6/30/81	10
G. Gaily International Corp.	6/1/80-6/30/81	10
Heyward & Co., Ltd.	6/1/80-6/30/81	10
Holdcheer Corp. Ltd.	6/1/80-6/30/81	0
Huihsin Trading Co., Ltd.	6/1/80-6/30/81	10
Jameco Corp.	6/1/80-5/31/81	11.37
Jiffy Trading Co.	6/1/80-5/31/81	10
Jump International Corp.	6/1/80-6/30/81	10
K. E. & Kingstone Co., Ltd.	6/1/80-6/30/81	0
Key Song International Co., Ltd.	6/1/80-5/31/81	11.37
Le Yang, Inc.	6/1/80-5/31/81	0
Long Joy Enterprises Co., Ltd.	6/1/80-5/31/81	5.9
Mine Chung Knitting Co., Ltd.	6/1/80-6/30/81	0
Nan Lung Plastics Co., Ltd.	6/1/80-5/31/81	11.37
Nan Ya Plastics Corp.	6/1/80-6/30/81	0
Nanping Corp.	6/1/80-6/30/81	0
Odin Industrial Co., Ltd.	6/1/80-5/31/81	11.37
Paulko enterprises	6/1/80-6/30/81	10
Progress Plastics Co., Ltd.	6/1/80-5/31/81	11.37
San Ching Plastics	6/1/80-5/31/81	11.37
San Jing Enterprises Corp.	6/1/80-5/31/81	5.9
Sequence Co., Ltd.	6/1/80-5/31/81	10
Taiwan Upholstery Furniture Export Supplies Ltd.	6/1/80-5/31/81	11.37
Tanner Enterprises Co.	6/1/80-6/30/81	11.37
Team Worldwide Corp.	6/1/80-6/30/81	10
Union Industries Ltd.	6/1/80-5/31/81	11.37
Wen Fung Industries Co., Ltd.	6/1/80-5/31/81	5.9
World Fashions Corp.	6/1/80-6/30/81	0
Yung Chieh Enterprise Co., Ltd.	6/1/80-5/31/81	11.37
THIRD-COUNTRY RESELLER/COUNTRY		
Lot Heng (PVC Co.), Ltd./Hong Kong	6/1/80-5/31/81	11.37

¹ No shipments during the period.

The Department has determined that the following seven firms do not export merchandise which is subject to the finding:

Canal International Corp.
Hotsun Industrial Corp.
Interbond Ltd.
P.R. Originals Co., Ltd.
Richard Soong Co., Ltd.
St. Solid Co., Ltd.
Taiwan Eva Industrial Co., Ltd.

The Department has also determined that the following two firms have gone out of business:

Foremost Worldwide (Taiwan) Co., Ltd.
Phoenix Enterprises Inc.

Therefore, these nine firms will not be covered in this review or future section 751 reviews. This is not a revocation of the finding with respect to these firms. Should these firms begin exporting the covered merchandise to the U.S., we shall treat them as new exporters.

Also as a result of this review, the Department revokes the antidumping finding on PVC sheet and film from Taiwan with respect to Nan Ya and twenty-one firms who ship only to the United States and only merchandise

manufactured by Nan Ya. These twenty-one firms are:

Apex International Corp.
BL & GY International Co., Ltd.
Cheng Hsueh Corp.
Chia Shiu Enterprises Corp.
Digest International Development Corp.
Dirksen Inc.
Easin Inc.
Everlasting Manufacturing Inc.
Gela & Co.
G. Gaily International Corp.
Heyward & Co., Ltd.
Holdcheer Corp. Ltd.
Huihsin Trading Co., Ltd.
Jiffy Trading Co.
Jump International Industries Corp.
K.E. & Kingstone Co., Ltd.
Mine Chung Knitting Co., Ltd.
Nanping Corp.
Paulko Enterprises
Team Worldwide Corp.
World Fashions Corp.

These revocations apply to all unliquidated entries of PVC sheet and film produced and sold by Nan Ya directly to the United States or indirectly through these twenty-one firms, and entered, or withdrawn from warehouse, for consumption on or after June 26, 1981, the date of publication of our tentative determination to revoke with regard to Nan Ya.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries made with purchase dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of PVC sheet and film from the remaining firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any shipment from a new exporter not covered in this or prior reviews, whose first shipments occurred after the most recent reviewed period and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt

of the information during the next administrative review.

This administrative review, partial revocation, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-12228 Filed 5-6-83; 8:45 am]

BILLING CODE 3510-25-M

[A-337-001]

Antidumping; Sodium Nitrate From Chile; Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Antidumping Duty

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of allowance of security in lieu of estimated duty pending early determination of antidumping duty.

SUMMARY: The Department of Commerce has determined that, on the basis of information received from the only manufacturer currently covered by the antidumping duty order on sodium nitrate from Chile, Sociedad Quimica y Minera de Chile, S.A., the Department has a sufficient basis to conduct an expedited review of the order. The Department will determine the appropriate foreign market values and United States prices by June 25, 1983. We will permit Sociedad Quimica y Minera de Chile, S.A. to post bonds or other security in lieu of the cash deposit of estimated antidumping duties for merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and before June 25, 1983.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On March 25, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 12580) an antidumping duty order on sodium nitrate from Chile. The Department announced that, in addition to deposits of estimated normal customs duties, Customs officers were to require a cash deposit of estimated antidumping duties on all merchandise entered, or

withdrawn from warehouse, for consumption on or after March 25, 1983.

On April 1, 1983, Sociedad Quimica y Minera de Chile, S.A. ("SQM") requested that the Department waive the requirement for cash deposit of estimated antidumping duties and conduct an expedited review pursuant to section 736(c) of the Tariff Act of 1930 ("the Tariff Act").

Before granting a waiver of cash deposits of estimated antidumping duties we must be satisfied that, based upon the information presented by SQM, we will be able to determine the appropriate foreign market values and United States prices within 90 days after the date of publication of the order.

After reviewing the information submitted by SQM, the Department is satisfied that it will be able to determine the appropriate foreign market values and United States prices.

Accordingly, the Department is instructing the Customs Service to waive cash deposits of estimated antidumping duties and accept bonds or other security for entries of sodium nitrate manufactured by SQM entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the results of this expedited review by June 25, 1983, including the results of its analysis of any such comments or hearing.

This notice is published in accordance with section 736(c)(2)(A) of the Tariff Act of 1930 as amended (19 U.S.C. 1675(2)(A)).

Judith Hippler Bello,

Deputy (for Policy) to the Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-12227 Filed 5-5-83; 8:45 am]

BILLING CODE 3510-25-M

[A-588-041]

Antidumping; Synthetic Methionine from Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On October 8, 1982, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan. The review covers the 30 known exporters and third-country resellers of this merchandise to the United States currently covered by the finding and the period July 1, 1980 through June 30, 1981.

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. The petitioner and two exporters submitted written comments. With the exception of the margin for one of the commenting exporters, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia McClenahan or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1973, the Treasury Department published in the *Federal Register* (38 FR 18392) an antidumping finding with respect to synthetic methionine from Japan. On October 8, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 44602-03) the preliminary results of its last administrative review of the finding. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of synthetic methionine, other than synthetic L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine National Formula grade (used for research and pharmaceutical purposes) and DL methionine feed grade (used as a feed additive). Both grades of synthetic methionine are currently classifiable under item 425.0420 of the Tariff Schedules of the United States Annotated.

The review covers the 30 known exporters and third-country resellers of Japanese synthetic DL methionine to the United States currently covered by the finding and the period July 1, 1980 through June 30, 1981.

Analysis of Comments Received

Interested parties were invited to comment on the preliminary results. The petitioner, Monsanto Industrial

Chemical Co., Ltd., and two exporters, Mitsui & Co., Ltd., and Ajinomoto Co., Inc., submitted written comments.

Comment 1: Monsanto argues that the agreement between AEC Corporation, a subsidiary of Rhone Poulenc, a French firm, and Mitsui was made for the sole purpose of circumventing the antidumping finding. The agreement implies displacement of exports of Japanese synthetic methionine from the United States market to other parts of the world. The agreement also raises by implication the question of who is now supplying AEC's non-U.S. former customers. The Department should investigate whether there is a parallel agreement between AEC and Mitsui's former supplier.

Department's Position: The antidumping finding relates only to sales of synthetic methionine produced in Japan and sold to the United States. The agreement refers only to sales of French synthetic methionine to the United States. The marketing plans for Japanese synthetic methionine to countries other than the United States are not relevant to this finding. The Department lacks authority to assess antidumping duties on French synthetic methionine under the aegis of the antidumping finding on Japanese synthetic methionine.

Comment 2: Mitsui contends that the preliminary dumping margin of 10.43 percent assigned to Nippon Soda Co., Ltd./Mitsui should be 8.83 percent, based upon the final results of the last section 751 review.

Department's Position: The Department agrees and has changed the dumping margin percentage for Nippon Soda/Mitsui to reflect correctly the most recent rate for this non-shipping combination.

Comment 3: Ajinomoto argues that, because it had no sales during the review period, the Department should not require an estimated antidumping duty cash deposit rate of 48 percent.

Department's Position: Because Ajinomoto failed to respond to our questionnaire until after publication of our preliminary results, we will continue to use the best information available to determine the cash deposit rate for Ajinomoto.

Final Results of the Review

Based on our analysis of the comments received, we have changed the margin percentage for Nippon Soda/Mitsui. The final results of our review for all of the other firms are the same as those presented in the preliminary results of review, and we determine that the following weighted-average margins

exist for the period July 1, 1980 through June 30, 1981:

MANUFACTURER/EXPORTER	Margin (percent)
Ajinomoto Co.	48
Alps Pharmaceutical Co.	22.54
Amano Pharmaceutical Co.	48
Chugai Boyeki Co.	0
Daito Bussan Co.	0
Helm Japan Ltd.	11.14
Inu Yakuin Kogyo	0
Isho Corporation	48
Iwaki & Co.	1.59
Koyo Mercantile Co., Ltd.	0
Kyowa Haido Kogyo Co.	29.10
Marubeni Corp.	48
Nippon Kiyaku	48
Nippon Soda Co., Ltd./Mitsui & Co.	8.83
K. Sakai & Co., Ltd.	0
Sumitomo Chemical	0
THIRD-COUNTRY RESELLERS (COUNTRY)	
Atlantic Trading Co. (Canada)	0
H. J. Baker & Brothers (West Germany)	0
Chemical & Feeds Ltd. (United Kingdom)	48
Chemo Dondorf (West Germany)	48
Deutsch-Norwegische GmbH (West Germany)	22.53
Fortmix Chemicals (Canada)	21.66
Karl O. Helm (West Germany)	2.86
Hoffman LaRoche (Canada)	0
Intest Corp. (France)	6.25
Mitsui & Co. (Belgium)	0
Mitsui & Co. (United Kingdom)	0
Nutrikem Limited (United Kingdom)	0
Seimsglass & Sohn (West Germany)	48
R. W. Unwin & Co. (United Kingdom)	0

¹ No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates during the period of review. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Japanese synthetic methionine from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any shipment from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1981, and who is unrelated to any covered firm, a cash deposit of 29.10 percent shall be required on future entries. This is the highest rate for a responding firm with shipments during the most recent period in which shipments occurred. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

April 27, 1983.

[FR Doc. 83-12328 Filed 5-5-83; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Export Visa Requirement for Down and Feather-Filled Apparel from the Republic of Korea

May 2, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Requiring an export visa for down and feather-filled apparel in Categories 353, 354, 653, and 654, produced or manufactured in the Republic of Korea.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 14, 1982 between the Governments of the United States and the Republic of Korea includes coverage of down and feather-filled apparel. Accordingly, on and after the effective date of this action, it will be necessary for shipments of these products to be visaed by the Government of the Republic of Korea in the same manner as other categories of textile products subject to this agreement are currently required to be visaed.

EFFECTIVE DATE: June 1, 1983 for goods exported on and after that date.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On February 9, 1981, there was published in the *Federal Register* (46 FR 11571) a

letter dated February 4, 1981 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs which permitted entry, effective on February 9, 1981 and until further notice, of down and feather-filled jackets, coats and vests in Categories 353, 354, 653, and 654, produced or manufactured in certain specified countries, including Korea, without an export visa. This agreement now covers down and feather-filled apparel. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements further amends the directive of February 4, 1981 to the Commissioner of Customs to require export visas for these products, produced or manufactured in Korea and exported on and after June 1, 1983.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 2, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This letter further amends, but does not cancel, the letter of February 4, 1981, which directed you to waive, effective on February 9, 1981 and until further notice, the export visa requirement for feather-filled apparel in Categories 353, 354, 653, and 654 from designated countries, including the Republic of Korea.

Effective on June 1, 1983 and until further notice, an export visa will be required for merchandise in Categories 353, 354, 653, and 654, produced or manufactured in the Republic of Korea and exported on and after that date.

The action taken with respect to the Government of the Republic of Korea and with respect to imports of cotton and man-made fiber textile products from Korea has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-12133 Filed 5-5-83; 8:45 am]

BILLING CODE 3510-25-M

Announcement of Change in the Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

May 3, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.
ACTION: The Government of the Republic of Korea has returned to using blue ink for its export visa and exempt certification stamps for merchandise in Categories 300-369, 400-469, and 600-669, exported on and after March 21, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175).

SUMMARY: On January 1, 1983 the Government of the Republic of Korea began using export visa and exempt certification stamps in black ink for textile and apparel products covered by the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 14, 1982 with the Government of the United States. Because it is difficult to identify the original version of a black ink stamp on entry documents, the Government of the United States asked the Korean Government to return to using blue ink. The Korean Government agreed to do so as of March 21, 1983.

EFFECTIVE DATE: On and after May 15, 1983 merchandise in Categories 300-369, 400-469, and 600-669, exported on and after March 21, 1983 will be required to have a blue ink visa or certification stamp in order to be entered into the United States for consumption or withdrawn from warehouse for consumption. Merchandise exported before March 21, 1983 will not be denied entry for consumption or withdrawal from warehouse for consumption in the United States, if visaed in black ink, provided all other requirements have been met.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On November 10, 1982 a notice was published in the *Federal Register* announcing changes in the visa and exempt certification stamps used by the Government of the Republic of Korea for certain cotton, wool, and man-made fiber textile and apparel products exported to the United States. One of

the changes involved the use of black ink stamps. Because of problems associated with the use of these stamps, the Korean Government has agreed to return to the use of blue ink for this purpose. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, effective on May 15, 1983 to require that merchandise in Categories 300-369, 400-469, and 600-669, produced or manufactured in Korea and exported on and after March 21, 1983 be visaed or certified in blue.

Sincerely,

Walter C. Lenahan,

Chairman, committee for the Implementation of Textile Agreements.

May 3, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of November 4, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements concerning visa and exempt certification requirements for cotton, wool, and man-made fiber textile products in Categories 300-369, 400-469, and 600-669, produced or manufactured in the Republic of Korea.

Effective on May 15, 1983 and until further notice, paragraph 3 of the directive of November 4, 1982 is amended to require that cotton, wool, and man-made fiber textile products in Categories 300-369, 400-469, and 600-669, produced or manufactured in the Republic of Korea and exported on and after March 21, 1983, shall be visaed or certified for exemption in blue ink in order to be permitted entry for consumption, or withdrawal from warehouse for consumption, in the United States. Merchandise in these categories that has been exported before March 21, 1983 and is visaed or certified for exemption in black ink shall not be denied entry, provided all other visa and exempt certification requirements have been met.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from Korea has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-12219 Filed 5-5-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted To OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Titles of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Services and/or Supplies—Handicapped Program (Active Duty Dependents Only) (DA Form 1863-3)

The CHAMPUS DA Form 1863-3 is utilized to collect information to evaluate eligibility for civilian health care benefits and to issue checks upon establishment of eligibility and determination that health benefits received are authorized. Civilian Hospitals and CHAMPUS Beneficiaries: 8,000 responses; 1,500 hours.

Forward comments to Ed Springer, OMB Des, Officer, Room 3235, NEOB, Washington, DC 20503, and John V. Wenderoth, Agency Clearance Officer, OASD(MS), DIRMS, IRAD, Room 1A658 Pentagon, Washington, DC 20301, (202) 697-1195.

A copy of the information collection proposal may be obtained from Office Services Branch, ATTN: Jane Bomgardner, Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045, Telephone (303) 361-3509.

Dated: May 3, 1983.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 83-12197 Filed 5-5-83; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Titles of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Statement of Personal Injury—Possible Third Party Liability (CHAMPUS) (DA Form 1863-5)

The CHAMPUS DA Form 1863-5 is necessary to recover from negligent third persons responsible for injuries to CHAMPUS beneficiaries, and certain others the reasonable value of medical care furnished. Civilian Hospitals and CHAMPUS Beneficiaries: 30,000 responses; 10,000 hours.

Forward comments to Ed Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20530, and John V. Wenderoth, Agency Clearance Officer, OASD(MS), DIRMS, IRAD, Room 1A658, Pentagon, Washington DC 20301, (202) 697-1195.

A copy of the information collection proposal may be obtained from Office Services Branch, ATTN: Jane Bomgardner, Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045, Telephone (303) 361-3509.

Dated: May 3, 1983.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 83-12198 Filed 5-5-83; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted To OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Titles of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension:

Prescription Billing—Outpatient Pharmaceutical Services CHAMPUS (DA Form 1863-4)

The CHAMPUS DA Form 1863-4 is necessary to collect information to evaluate eligibility for civilian health benefits authorized and to issue checks upon establishment of eligibility and determination that pharmaceuticals received are obtainable only by prescription. Civilian Pharmacies, Hospitals and CHAMPUS Beneficiaries: 25,000 responses; 8,250 hours.

Forward comments to Ed Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20530, and John V. Wenderoth, Agency Clearance Officer, OASD(MS), DIRMS, IRAD, Room 1A658, Pentagon, Washington, DC 20301, (202) 697-1195.

A copy of the information collection proposal may be obtained from Office Services Branch, ATTN: Jane Bomgardner, Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045, Telephone (303) 361-3509.

Dated: May 3, 1983.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 83-12199 Filed 5-5-83; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the total number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Information Collection in Support of DoD Solicitation Instruments

The DoD issues approximately 12 million annual solicitations for the purpose of awarding contracts. Information Collection from the Public in support of this DoD Acquisition Process is necessary to evaluate bids and responses from potential suppliers for supplies, services and hardware for the purpose of making awards in conformance with the requirements of the Armed Services Procurement Act Title 10, U.S.C.

Contractors: 600,000 responses; 330,000,000 hours (preliminary estimate).

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DoD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone: (202) 697-1195.

A copy of the information collection proposal may be obtained from James D. Richardson, DMSSO, II Skyline Place, Suite 1403, 5203 Leesburg Pike, Falls Church, VA 22041, telephone: (703) 756-2340/1.

M.S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 83-12200 Filed 5-5-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Extension of Closing Date To Apply for and Establish Institutional Eligibility To Participate in the Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Programs for the 1983-84 Award Year

AGENCY: Education Department.

ACTION: Notice of Extension of Closing Date To Apply for and Establish Institutional Eligibility To Participate in the Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Programs for the 1983-84 Award Year.

SUMMARY: This notice extends the closing date from February 2, 1983 to June 30, 1983, to enable a class of institutions of higher education to apply for and qualify as eligible institutions of higher education for the purpose of participating in the supplemental Educational Opportunity Grant (SEOG), College Work-Study (CW-S), or National Direct Student Loan (NDSL) Program in award year 1983-84. The class of institutions covered by this extension includes only those institutions that applied for funds under the SEOG, CW-S, or NDSL Program for award year 1983-84 by October 15, 1982, the published closing date for those funding applications.

This extension is being provided to allow those institutions, that were unable to qualify as eligible institutions because of the Secretary's timetable for listing State agencies that the Secretary determines are reliable authority as to the quality of public postsecondary vocational education in the State, an additional opportunity to establish their eligibility.

An institution that wishes to have its eligibility established for the purpose of participating in the SEOG, CW-S or NDSL Program in the 1983-1984 award year must submit a completed ED FORM 1059 (Request for Institutional Eligibility for Programs) with the required documentation. The Secretary will not award any funds for the 1983-1984 award year to an institution under the SEOG, CW-S, or NDSL Program unless he determines on or before June 30, 1983, that the institution meets the requisite eligibility criteria.

The notice establishing the February 2, 1983 closing date, which was published in the *Federal Register* on January 3, 1983 (48 FR 58-59), provides detailed information concerning the submission process.

FOR FURTHER INFORMATION CONTACT: Inquiries concerning this extension date should be addressed to Dr. Leslie Ross, Chief, Institutional Eligibility Section, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, SW. (Room 3030, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-9873.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Opportunity Grant Program, 84.007; College Work-Study

Program, 84.033; National Direct Student Loan Program, 84.038)

Dated: May 3, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83-12226 Filed 5-5-83; 8:45 am]

BILLING CODE 4000-01-M

Office of the Secretary

Applications for Review Accepted for Hearing by the Education Appeal Board

AGENCY: Education Department.

ACTION: Notice of Applications for Review Accepted for Hearing by the Education Appeal Board.

SUMMARY: This notice lists the applications for review that were received and accepted for hearing by the Education Appeal Board between December 15, 1981 and March 31, 1983.

FOR FURTHER INFORMATION CONTACT:

Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW., (Room 2141, FOB-6), Washington, D.C. 20202. Telephone (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct: (1) Audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve a determination that a grant is void, the disapproval of a request for permission to incur an expenditure during the term of a grant, or determinations regarding cost allocation plans or special rates negotiated with specific grantees. Final regulations governing Board jurisdiction and procedures were published in the *Federal Register* on May 18, 1981 (46 FR 27304).

This notice lists the applications for review that were received and accepted for hearing by the Education Appeal

Board between December 15, 1981, and March 31, 1983.

Appeal of Paul Quinn College, Docket No. 1-(94)-81, ACN 06-11004.

Paul Quinn College had received a grant of \$859,000 for a two-year funding period; the audit covered just one fiscal year, FY 79-80, the first year under the grant. The College appealed three disallowances in the final audit determination: (1) Disallowance of \$9,900 in National Teaching Fellowship Grant costs; (2) disallowance of \$100,153 in recruitment, accounting, and admissions costs; and (3) disallowance of \$238,158 in "other unsupported labor costs." The Department's Assistance Management and Procurement Service unit had sought recovery of \$372,263 for six audit exceptions, but the College has appealed only the three enumerated above for a total of \$346,211.

Appeal of the State of California, Docket No. 2-(95)-82, ACN 09-10450.

The State appealed a final audit determination by the Assistant Secretary for Educational Research and Improvement that the State overclaimed \$1,592,952 under Title IV, Part B, of the Elementary and Secondary Education Act during fiscal years 1976 through 1980.

The Assistant Secretary also determined that the Federal Government did not owe the California State Department of Education \$730,000 for professional and administrative services paid by the State.

Appeal of Huston-Tillotson College, Docket No. 3-(96)-81, ACN 06-11003.

Huston-Tillotson College had received a two-year grant of \$1,267,000 under Title III, Strengthening Developing Institutions; an audit was conducted for FY 79-80 and audit exceptions totalling \$58,670 were disallowed by the Department's Assistance Management and Procurement Service unit. The grantee appealed these disallowances, which included: (1) Unsupported supplies and equipment costs, \$4,277; (2) duplicate claims, \$2,270; (3) unauthorized equipment costs, \$20,600; and (4) unallowable recruitment costs, \$31,523.

McKeesport Area School District, Docket No. 4-(97)-82, ACN 03-10001.

The Department's Assistance Management and Procurement Service unit supported disallowances totalling \$36,126 as the result of an audit of monies spent by McKeesport in the 1979-80 school year for certain remedial programs under ESAA legislation. The

auditor reported that a portion of the time of the ESAA-funded counselors was spent on non-ESAA activities. McKeesport argues that the auditor did not make an appropriate determination and appeals the finding.

Appeal of the State of Hawaii, Docket No. 5-(98)-82, ACN 09-15389.

The State appealed a final audit determination by the Assistant Secretary for Educational Research and Improvement that State-funded salaries and wages charged to the administration of the Library Services and Construction Act program for fiscal year 1978 were not substantiated by any time distribution or equivalent records. A refund of \$56,906.70 of Federal funds is sought. This amount may be reduced by application of the Statute of Limitations.

Appeal of the State of California, Docket No. 6-(99)-82, ACN 09-10105

As the result of an audit of the administration of California's support service centers for the four fiscal years ending June 30, 1980, Federal auditors found that the Federal share of certain "Overcharges" amounted to a total of \$319,653. The Assistance Management and Procurement Service unit of the U.S. Department of Education supported these findings, requiring repayment of the full \$319,653. This total included: (1) \$154,787 for "revenues in excess of actual costs" and (2) \$164,866 for "equipment depreciation overcharges."

California did not dispute (1) above, and agreed to repay the \$154,787. California, however, is appealing the second of these two findings calling for the repayment of \$164,866.

Appeal of St. Bernard Parish School Board, Docket No. 7-(100)-82, ACN 11-23028

Federal auditors concluded that \$753,205 in bilingual funds granted to St. Bernard Parish for the period July, 1978, to June, 1981, were used in violation of Federal regulations in that Spanish was being taught to children whose dominant language is English. The Parish School Board has appealed the Department's determination that the money be refunded.

Appeal of St. John the Baptist Parish School Board, Docket No. 8-(101)-82, ACN 11-23028

Federal auditors concluded that \$765,603 in bilingual funds granted to St. John the Baptist Parish for the period July, 1978, to June, 1981, were used in violation of Federal regulations in that French was being taught to children whose dominant language is English. The Parish School Board has appealed

the Department's determination that the money be refunded.

Appeal of Tangipahoa Parish School Board, Docket No. 9-(102)-82, ACN 11-23028

Federal auditors concluded that \$572,054 in bilingual funds granted to Tangipahoa Parish for the period July, 1978, to June, 1981, were used in violation of Federal regulations in that Italian was being taught to children whose dominant language is English. The Parish School Board has appealed the Department's determination that the money be refunded.

Appeal of the State of Indiana, Docket No. 10-(103)-82, ACN 05-23587

A grant was awarded the Indiana Department of Public Instruction for "sex desegregation activities." Federal auditors subsequently reviewed costs in the amount of \$166,725 for the period July 1, 1979, to June 30, 1980, to see whether those costs were appropriately incurred. The auditors found that the incurred costs included \$9,501 in indirect costs which had not been included in the grant or in the approved budget. The auditors disapproved the expenditure of the \$9,501 while approving the expenditure of the balance of the grant. The State of Indiana has appealed the audit disallowance.

Appeal of the State of Indiana, Docket No. 11-(104)-82, ACN 05-23586

The Indiana Department of Public Instruction received a grant of \$269,886 for race desegregation activities for the period July 1, 1979, through June 30, 1980. A subsequent audit disallowed \$3,481 for consulting costs incurred without the necessary prior approval and for other infractions of applicable rules and regulations. The State of Indiana appealed \$12,668 of the questioned costs.

Appeal of the Commonwealth of Puerto Rico, Docket No. 12-(105)-82, ACN 02-14013 (previously HEW ACN 02-19574)

Federal auditors reviewed credits due the U.S. Department of Education as a result of uncashed and cancelled checks related to ED-supported programs for fiscal year 1976 through fiscal year 1979. The auditors determined that \$1,083,615 should have been returned to the Federal Government rather than desposited to the general account of the Commonwealth. The Commonwealth has appealed that determination.

Appeal of the State of Indiana, Docket No. 13-(106)-82, ACN 05-23591

The Indiana Department of Public Instruction received Federal funds

totalling \$95,000 for a reading improvement project. The Federal audit was undertaken for the period September 1, 1979, to August 31, 1980, to determine whether expenditures of \$83,219 during that period were proper and reasonable. The auditors determined that expenditures of \$18,010 for equipment were made in violation of required procedures, and that an additional \$5,665 for indirect costs were not approved as required. A total of \$23,675 is sought for recovery by the Federal Government; Indiana appeals the findings.

Appeal of the State of Massachusetts, Docket No. 14-(107)-82, ACN 01-14009 (previously 01-19550)

The Federal audit in Massachusetts covered programs conducted under the Vocational Education Act of 1963, As amended, during the period July 1, 1973, through February 28, 1978. The State of Massachusetts has appealed the Assistant Secretary's Letter of Final Determination requiring a refund of \$6,061,823 which, by stipulation of the parties, has been reduced by the sum of \$689,841 barred by the Statute of Limitations.

Appeal of the State of Indiana, Docket No. 15-(108)-82, ACN 05-20115

The State is appealing a final audit determination by the Assistant Secretary for Educational Research and Improvement that the State had obligated and expended library grant award funds for 1976 and 1977 after the period of obligation had expired. The Assistant Secretary seeks recovery of \$1,579,091 said to be unallowable for this reason.

Appeal of the State of Pennsylvania, Docket No. 16-(109)-82, ACN 03-19589 (HHS ACN 03-14006)

The Federal auditors in Pennsylvania reviewed certain expenditures incurred under the Vocational Education Act of 1963, as amended, during the period July 1, 1977, through June 30, 1979. The Assistant Secretary concluded that Pennsylvania should refund \$3,702,976 of fiscal year 1978 funds which were not obligated and expended within the available time period. A refund of an additional \$170,674 is sought for funds charged improperly to the vocational education program.

Appeal of the San Antonio Independent School District, Docket No. 17-(110)-82, ACN 08-20105

The San Antonio Independent School District had been awarded a grant of \$270,243 for a bilingual education

program. The auditors subsequently reviewed claimed expenditures of \$268,556.35 for the period October 1, 1980, through September 30, 1981, and concluded that unallowable costs of \$6,366 resulted from the participation of ineligible students. The School District is appealing the adverse finding.

Appeal of the State of Washington,
Docket No. 1-(111)-83, ACN 10-20600

The Assistant Secretary for Elementary and Secondary Education seeks recovery of \$1,237 under Title I, ESEA, on the grounds that the State's time and effort reporting system did not accurately reflect the expenditure of time by State employees; as a consequence two employees are alleged to have spent less time on federally-funded activities than the records showed. The State is appealing the adverse finding on the grounds that the recordkeeping system is fully adequate.

Appeal of the State of Florida, Docket No. 2-(112)-83, ACN 04-20100

As the result of an audit of certain federally-funded vocational education expenditures in Florida from July 1, 1977, through September 30, 1981, the Assistant Secretary for Vocational and Adult Education has requested a refund of \$766,893 from Florida. The auditors found that this sum had not been expended by Florida during the period it was legally possible to do so. Florida appeals the finding, claiming that it has interpreted properly the Tydings Amendment governing the timing of expenditure of Federal funds.

Appeal of the Oakland Unified School District, Docket No. 1-(113)-83, ACN 09-20502

The Assistance Management and Procurement Service unit of the U.S. Department of Education seeks the recovery of \$4,000 it alleges was improperly transferred by Oakland to another school district. Oakland appeals the finding on the grounds that it was instructed by a Federal official to make the transfer to the other school district.

Appeal of Wayne State University,
Docket No. 4-(114)-83, ACN 05-23601

The Assistance Management and Procurement Service unit of the U.S. Department of Education seeks recovery of \$7,762 as the result of an audit of a bilingual education grant. The audit alleges that the University failed to follow proper procedures in obtaining consultant services. The University appeals the finding.

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: May 2, 1983.
Wendy Borchardt,
Acting Deputy Under Secretary.
(FR Doc. 83-12225 Filed 5-5-83; 8:45 am)
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-80-008; ERA Case Nos. 51007-0638-21-22, 51007-0638-22-22, 51007-0638-23-22, and 51007-0638-24-22]

Modification of an Order Granting Permanent Peakload Exemptions to Florida Power Corp. for Suwannee Powerplants

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and Proposed Modification of an Order Granting Permanent Peakload Exemptions to Florida Power Corporation for Suwannee Powerplants Nos. CT-1 Through CT-4, Suwannee County, Florida.

SUMMARY: In response to a request dated February 4, 1982, and revised on December 29, 1982 and April 4, 1983, from Florida Power Corporation (FPC), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), and 10 CFR Part 501, Subpart G, to modify the permanent peakload exemptions granted by Order ("Order") to four combustion turbine powerplants identified as Suwannee CT-1 through CT-4, owned and operated by FPC at its Suwannee station, Suwannee County, Florida. The modification would permit the alternate use of natural gas in each of the combustion turbines in addition to the distillate oil permitted by the Order.

Based upon its review of FPC's modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR 501.102(b), exist with respect to the applicability of the original exemptions. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the Federal Register (see DATE section, below). If no responses are received within this period, the Order modification, as proposed, for each combustion turbine unit shall become

final upon the expiration of the period, without further action by ERA.

A detailed discussion of the Order and FPC's request for modification thereof is provided in the SUPPLEMENTARY INFORMATION section below.

DATE: Written responses to ERA's proposed modification of the FPC Order must be received by ERA no later than June 8, 1983.

ADDRESS: Written responses must be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA-093, 1000 Independence Avenue, SW., Washington, D.C. 20585. The case numbers, FC 51007-0638-21-22, 22-22, 23-22, 24-22, should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone (202) 252-8162; Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone (202) 252-2967.

SUPPLEMENTARY INFORMATION: On August 1, 1980, ERA issued an Order exempting FPC's Suwannee River peaking units CT-1, CT-2, CT-3 and CT-4, located at its Suwannee Station in Suwannee County, Florida, from Section 202 of FUA, which prohibits both the use of natural gas or petroleum as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source (45 FR 52864, August 6, 1980). FPC's exemption petition was filed and granted under § 503.41 of ERA's interim rules for new facilities and Section 212(g) of FUA, which provide for a permanent peakload exemption for new electric powerplants. Subject to the terms and conditions set forth in the Order, the permanent exemptions permitted the use of distillate oil to meet peakload requirements in each of the four combustion turbine powerplants. At the request of FPC, on July 16, 1981 (46 FR 38122 (July 24, 1981)), the Order was modified so as to revise terms and conditions relating to peakload use restrictions.

By letter dated February 4, 1982, and revised on December 29, 1982 and April 4, 1983, FPC requested that ERA modify the Order to permit the alternate

burning of natural gas in each of the four combustion turbines in addition to burning distillate oil. In support of its request, FPC states that its recent construction of new transmission lines in the northern part of Florida has reduced the need to operate its three natural-gas fired baseload powerplants at the Suwannee facility to maintain system voltage levels in the northern peninsula of its service area. In response to these conditions, FPC plans to operate the natural gas units at a reduced capacity factor, resulting in excess natural gas availability at the Suwannee facility. Based upon these changed circumstances, FPC seeks to modify the Order so as to permit it the operational flexibility to use natural gas as an alternative to distillate for peakload purposes in Suwannee CT-1 through CT-4.

ERA's final rules governing the exemption for the use of natural gas in new peakload powerplants are set forth at 10 CFR 503.41 (46 FR 59872, 59916 (December 7, 1981)), and provide that to qualify for the exemption:

- (1) A petitioner must certify to ERA that the powerplant will be operated solely as a peakload powerplant; and
- (2) The Administrator of the EPA or the appropriate state air pollution control agency must certify that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded.

FPC has certified that its powerplants CT-1 through CT-4 would be operated solely as peakload powerplants. Since ERA has determined that there are no presently available fuels which may be used in FPC's CT-1 through CT-4 units, the environmental certification requirement is waived with respect to FPC's request.

As requested, pursuant to 10 CFR 501.101(a), ERA has commenced a proceeding to modify the Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G (46 FR 59872, 59898 (December 7, 1981)). Based upon the information contained in FPC's modification request and upon the record as a whole, ERA proposes:

- (1) To find that FPC has demonstrated significantly changed circumstances pursuant to 10 CFR 501.102(b), warranting modification of the Order; and
- (2) To modify the Order to permit the use of either natural gas or petroleum as the primary energy source in Suwannee

CT-1 through CT-4 peaking powerplants subject to the terms and conditions set forth in the Order as modified on July 16, 1981.

Pursuant to 10 CFR 501.101(c), by letter dated April 4, 1983, FPC sent notice of its request for modification of the Order to Garrett Corporation, the sole commenter in the original Order proceeding. Parties to the original Order proceeding are hereby notified of ERA's proposed modification of the Order and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days of the publication of this Notice in the Federal Register. If ERA receives no response within this period, the Order modification shall become final as proposed, without further ERA action, upon expiration of the period.

Issued in Washington, D.C., April 29, 1983.
Robert L. Davies,

Deputy Director, Office of Fuels Programs,
Economic Regulatory Administration.

(FR Doc. 83-12138 Filed 5-5-83; 8:45 am)

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EF81-2011-000, and EF82-2011-001]

Bonneville Power Administration; Order Setting Matters for Hearing, Consolidating Dockets, and Establishing Procedures

Issued: April 29, 1983.

On June 29, 1981, the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy submitted to the Commission for final confirmation and approval various wholesale power rate schedules (Docket No. EF81-2011-000) and general rate schedule provisions developed by the Administrator of the Bonneville Power Administration (Bonneville or BPA).¹ The rate schedules were submitted to the Commission pursuant to Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act or Act).² The rates were intended to increase wholesale power revenues to Bonneville by approximately \$457 million over its previous rates. Approval of these rates was requested by Bonneville for a five-year period beginning July 1, 1981.³

¹ See Attachment A for rate schedule designations.

² 16 U.S.C. 380e (December 5, 1980).

³ The rate schedules were granted interim approval by the Assistant Secretary pursuant to Delegation Order No. 0204-33 on June 24, 1981, to become effective on an interim basis as of July 1, 1981. On June 22, 1982, the Commission extended interim approval of the rate schedules pursuant to

On August 16, 1982, Bonneville filed a proposed superseding wholesale power rate increase and request for interim approval in Docket No. EF82-2011-000 pursuant to Section 7 of the Regional Act. The proposed rates were established by Bonneville to provide for an increase in revenues of approximately \$815 million for fiscal year 1983. These rates were placed into effect on an interim basis by the Commission on September 29, 1982, to become effective as of October 1, 1982.⁴

Notice of the filing in Docket No. EF81-2011-000 was published in the Federal Register, with interested parties invited to submit comments on or before August 24, 1981.⁵ In response, 26 petitions to intervene were received.⁶ Additionally, four sets of cross comments were received in response to the initial comments.⁷

Notice of the filing in Docket No. EF82-2011-000 was published in the Federal Register with interested parties invited to submit comments on Bonneville's request for interim rate approval on or before October 1, 1982. In a September 29, 1982 order granting interim approval of Bonneville's rates in that docket,⁸ the Commission noted the interventions of 18 parties⁹ and requested further comments on Bonneville's filing with respect to those issues that they felt should be set for hearing under Section 7(k) of the Act. In response, the Commission received comments from eight parties.¹⁰

section 7(i)(6) of the Regional Act. See "Order Granting Extension of Interim Rates For A Limited Time," Docket Nos. EF81-2011-001 and EF81-2021-001, 19 FERC ¶ 61,281.

⁴ "Order Granting Interim Approval, Granting Waiver, Noting Interventions, Denying Motions, and Establishing Procedures," 20 FERC ¶ 61,388 (September 29, 1982).

⁵ The original comment period, which ended August 15, 1981, was extended until August 24, 1981, in a Federal Register notice published on August 14, 1981.

⁶ See Attachment B for list of intervenors.

⁷ After the close of the comment period, the parties filing comments were requested to send copies of their pleadings to each of the other parties to allow all parties an opportunity to submit cross-comments. In the interim, however, the date for cross-comments was suspended to allow the Commission the opportunity to first address issues raised by the parties regarding the scope of its jurisdiction over Bonneville's rates under the new Regional Act. On September 1, 1982, the Commission issued an order resolving the scope of its jurisdiction, granting intervention, and reestablishing a date for cross-comments. See "Order Resolving Scope of Commission's Jurisdiction, Granting Intervention, and Establishing Procedures," 20 FERC ¶ 61,292.

⁸ See footnote 4, *supra*.

⁹ See Attachment C for list of intervenors.

¹⁰ Public Utility Commissioner of Oregon; the Eugene Water and Electric Board and City of Seattle; City Light Department (EWEB or Seattle); the People of the State of California, the California

Discussion

These cases are the first to come before the Commission since passage of the Regional Act on December 5, 1980. As we noted in a September 1, 1982 order delineating the scope of our jurisdiction under the Regional Act,¹¹ the Commission's new role in the BPA ratemaking process is to assure that Bonneville's overall rates:

(A) Are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power system over a reasonable number of years after first meeting the Administrator's other costs;

(B) Are based upon the Administrator's total system costs; and

(C) Insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.¹²

Additionally, the Commission is obligated under Section 7(k) of the Act to make a finding that Bonneville's rates for service to the non-regional, non-firm customers served within the United States ("export rates") comport with the standards set forth in the Bonneville Project Act of 1937,¹³ the Flood Control Act of 1944,¹⁴ and the Federal Columbia River Transmission System Act.¹⁵ To insure that Bonneville's non-firm export rates meet these standards, Section 7(k) further requires that the parties be afforded an opportunity to be heard by the Commission with regard to these rates.

In their pleadings, the parties have raised numerous concerns regarding Bonneville's non-firm export rates. These concerns relate to Bonneville's NF-1 non-firm energy rate (EF81-2011-000) and its superseding NF-2 non-firm energy rate (EF82-2011-000). The NF-1 rate, which supersedes Bonneville's H-6 non-firm rate, is purportedly based on the costs of resources that contribute to the availability of non-firm energy. The NF-1 rate consists of a floor rate, which is 5.0 mills per kilowatt-hour during off-peak hours and 6.5 mills per kilowatt-

hour during peak hours, and a variable rate. The ceiling on the variable rate, according to Bonneville, is equivalent to the cost of the most expensive power purchase or resource in operation over a given period of time. Bonneville estimates the average NF-1 sales rate under this schedule to be approximately 9.6 mills per kilowatt-hour.

Many parties have challenged both the structure of the non-firm rate and the assumptions used by Bonneville in its analysis of the non-firm revenues generated by the rate. A number of customers in the southwest, for example, argue that Bonneville's NF-1 rate is not cost-based and therefore does not comport with the statutory requirements that rates be set at the lowest possible level consistent with sound business principles. Other customers raise questions relating to BPA's purported ability to use economic operation of its hydro system to meet non-firm needs without jeopardizing its firm power capabilities. Other challenges have been raised as well.

The NF-2 rate was purportedly designed by Bonneville to address concerns raised by the parties with regard to BPA's NF-1 rate and its predecessor, the H-6 rate. The superseding NF-2 rate is comprised of three components: a standard rate, a spill rate, and an incremental rate. Sales under the NF-2 rate schedule are projected by Bonneville to yield a 19 percent increase over the NF-1 rate. The standard rate is set at 18.2 mills per kilowatt-hour. Under the standard rate, 50 percent of each maximum hourly amount will be offered with a guaranteed delivery provision. The spill rate, which is set at 9 mills per kilowatt-hour, applies when Bonneville is in a spill or imminent spill condition at one of its hydroelectric plants. The incremental rate is applied to energy sold by Bonneville which has an incremental cost greater than 16.2 mills per kilowatt-hour and which is produced or purchased by Bonneville at its option concurrently with the non-firm sale. Bonneville estimates the average non-firm rate for sales under the NF-2 rate schedule at approximately 11.2 mills per kilowatt-hour.

Like the NF-1 rate, a number of parties, particularly those in the southwest, have questioned the conceptual basis upon which the NF-2 rate schedule has been designed, arguing that the rate should be based on the costs of providing non-firm service. The California Public Utility Commission, for example, argues that the NF-2 rate should be based on marginal costs with, in certain

circumstances, individual adjustment to rates based on cost of service. Certain northwest utilities,¹⁶ on the other hand, advocate reinstatement of the prior H-6 share the savings methodology.

In addition to challenges to Bonneville's requested NF-1 and NF-2 rates, a number of parties have also raised issues regarding Bonneville's Surplus Energy rate schedule (SE-1) and its Surplus Power Rate schedule (SP-1). The primary concerns of the parties relate to the question of whether the terms and conditions of the SE-1 and SP-1 rates are sufficiently differentiated from those of the NF-2 rate to assure that BPA is not selling non-firm energy in the guise of firm energy or firm power. Under Section 7(k) of the Act, should the assuredness of energy under these rate schedules be less than firm, these rates would then be subject to review pursuant to section 7(k) of the Act, along with the NF-1 and NF-2 rate schedules. While there is some uncertainty as to the magnitude of surplus power that BPA intends to market under these schedules, our review indicates that Bonneville will have sufficient capacity during the effective period to assure that it will not be marketing power under these schedules in excess of the surplus firm power capability. Accordingly, we have no reason to believe that Bonneville will not fulfill its obligation to sell only non-firm energy under the NF-2 rate and to sell only surplus firm service under the SP-1 and SE-1 rates. We therefore find it inappropriate to set these rate schedules for hearing under Section 7(k) of the Act.

With respect to the NF-1 and NF-2 rate schedules, we find that significant questions have been raised by the parties regarding whether these schedules meet the standards set forth in the applicable power marketing statutes. Based on the record presented, we cannot make a determination as to whether the revenue level proposed to be collected or the basis upon which the rate schedules have been designed is appropriate. We shall therefore set these matters for hearing.

With respect to determining whether Bonneville's overall rate level is in compliance with the standards set forth in section 7(a)(2) of the Regional Act, the Commission is presently in the process of reviewing these matters for purposes of confirmation and approval, or disapproval. We have been informed by our staff that there are currently a number of data requests to BPA outstanding in Docket No. EF82-2011-000. Until this review process is

¹⁶ EWEG and Seattle.

Public Utilities Commission, the Department of Water & Power of the City of Los Angeles, et al.; Pacific Gas & Electric Company, and Southern California Edison Company (California Utilities); the Public Power Council, the Direct Service Industrial Customers, and the Investor-Owned Utilities. Comments in this docket were also submitted on September 8, 1982, by the California Energy Commission.

¹¹ "Order Resolving Scope of Commission's Jurisdiction, Granting Intervention, and Establishing Further Procedures", Docket Nos. EF81-2011-000 and EF81-2021-000, 20 FERC ¶ 61,292 (September 1, 1982).

¹² Section 7(a)(2) of the Regional Act; 16 U.S.C. 839e(a)(2).

¹³ 16 U.S.C. 832.

¹⁴ 16 U.S.C. 825.

¹⁵ 16 U.S.C. 838.

completed, we cannot determine whether Bonneville's overall rates will produce revenues sufficient to recover the costs of the Federal investment in the Bonneville projects. We see no reason, however, to delay hearing on the Section 7(k) rates pending a determination on Bonneville's overall rate level.

We similarly see no reason to defer our ongoing evaluation of Bonneville's overall rates until the Section 7(k) proceedings are completed. Our review indicates that the revenues from the non-firm, non-regional sales would amount to between one-half of one percent and twelve percent of Bonneville's total revenues. An ultimate adjustment to the Section 7(k) rates of even fifty percent of the proposed rates would thus have a maximum impact on BPA's overall revenues of no greater than six percent. It therefore appears that any Commission ordered adjustment in the non-firm, non-regional revenues as a result of the Section 7(k) hearings would not have a significant enough impact to hold up our ongoing review of BPA's overall rates. Accordingly, we shall initiate a hearing on the Section 7(k) rates and continue our review of BPA's other rates in these dockets.

We find that Docket Nos. EF81-2011-000 and EF82-2011-001 contain common issues of law and fact with respect to Bonneville's non-firm, non-regional rates for sales within the United States. In light of the similar issues involved as well as the similarities among intervening parties, we shall order these dockets consolidated for purposes of hearing and decision.

The Commission notes that a substantial record has been developed by the Bonneville Administrator which has been submitted for filing in these dockets. In light of this fact, it would appear that discovery and preparation for hearing in this case should not unduly delay the proceedings. Any ultimate decision with respect to these matters, however, will be within the discretion of the presiding law judge.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e, particularly section 7(k) thereof, Bonneville's NF-1 and NF-2 rates applicable to sales of non-firm electric power within the United States, but outside the region, are hereby set for hearing. The hearing shall be conducted in accordance with the procedures established for ratemaking by the

Commission pursuant to the Federal Power Act.

(B) Docket Nos. EF81-2011-000 and EF82-2011-001 are hereby consolidated for purposes of hearing and decision.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately twenty (20) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(D) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,
Secretary.

Attachment A

Docket No. EF81-2011—Rate Schedules

PF-1—Priority Firm Power Rate
IP-1—Wholesale Power Rate for Industrial firm power
MP-1—Wholesale Power Rate for Modified firm power
CF-1—Wholesale Firm Capacity Rate
CE-1—Wholesale Emergency Capacity Rate
NR-1—New Resources Firm Power Rate
NF-1—Wholesale Nonfirm Energy Rate
RP-1—Reserve Power Rate
FE-1—Wholesale Firm Energy Rate
SI-1—Special Industrial Power Rate
General Rate Schedule Provisions

Docket No. EF82-2011-001—Rate Schedules

PF-2—Priority Firm Power Rate
IP-2 (MP-2)—Industrial Firm Power Rate
NR-2—New Resources Firm Power Rate
SP-1—Surplus Firm Power Rate
SE-1—Surplus Firm Energy Rate
NF-2—Nonfirm Energy Rate
RP-2—Reserve Power Rate
FE-2—Firm Energy Rate
SI-2—Special Industrial Power Rate
CF-2—Firm Capacity Rate
CE-2—Emergency Capacity Rate
EB-1—Energy Broker Rate
General Rate Schedule Provisions

Attachment B

*Bonneville Power Administration,
Docket No. EF81-2011-000*

St. Regis Paper Company
Public Utility Commissioner of Oregon

Southern California Edison Company
Direct Service Industrial Customers
Puget Sound Power and Light Company
Public Utilities Commission of the State of California

Department of Water and Power of the City of Los Angeles, Public Service Department of the City of Glendale, Public Service Department of the City of Burbank, The Water and Power Department of the City of Pasadena
Washington Utilities and Transportation Commission

Washington Water Power Company
The Montana Power Company
CP National Corporation
Portland General Electric Company
Pacific Power and Light Co.
Pacific Power and Light Company
Public Generating Pool
Pacific Gas and Electric Company
Public Utility District No. 1 of Snohomish County, Washington
Public Power Council
Idaho Power Company
Idaho Public Utilities Commission
Utah Power and Light Company
International Paper Company
Anaconda Aluminum Company
Honorable James Weaver
Public Service Commission of Montana
California Energy Commission
Vigilante Electric Cooperative, Inc.

Attachment C

Docket No. ER82-2011-001

C.P. National Corporation
Portland General Electric Co.
California Energy Commission
Puget Sound Power and Light Co.
Idaho Power Co.
Utah Power and Light Co.
Direct Services Industries
Cities of Los Angeles, Glendale, Burbank, Pasadena and Pacific Gas and Electric Co. and Southern California Edison Co.
Montana Power Co.
Cities of Eugene, Oregon and Seattle, Washington
California Public Utilities Commission
Public Utility Districts of Clallam, Grays Harbor, Lewis, Mason No. 1 and No. 3, Pacific and Snohomish Counties, Washington
Washington Water Power Co.
Association of Public Agency Customers
Public Power Council
Public Utility Commissioner of Oregon

[Docket No. R183-5-000]

MGF Oil Corp.; Complaint

May 2, 1983.

Take notice that on March 4, 1983 MGF Oil Corporation (MGF) filed a complaint with the Commission against Pyro Energy Corporation (Pyro) and El Paso Natural Gas Company (El Paso). The oil wells involved are the Sears #1, Sears #2, and Sears #3 and are located in Survey 30, T&P RR Co., Block 20, Nolan County, Texas. MGF sells casinghead gas produced from the above-mentioned wells to Pyro, which in turn resells the gas to El Paso. Initially the transaction between MGF and Pyro was governed by an interstate contract, dated January 24, 1972. This contract expired on January 24, 1982. Under this contract the subject gas was sold at \$1.77 per Mcf at 14.65 psia. After being unable to conclude a satisfactory replacement contract with Pyro, MGF filed a unilateral rate increase in Docket No. CS69-31 (and an application for abandonment of the subject sales to Pyro). MGF filed for a rate of \$.961 per MMBtu at 14.73 psia for recompletion gas produced from the Sears #2 well and for a rate of \$.572 per MMBtu at 14.73 psia for Permian Basin gas produced from the Sears #1 and #3 wells.

Although Pyro expressed no objection to the abandonment application, MGF states that El Paso has advised that it could not support the application; however, El Paso also advised that, to some extent, it would be willing to pay a higher rate for the subject gas. MGF has now sold gas to Pyro for a year without a contract.

By its complaint MGF seeks to require Pyro and El Paso to pay on the basis of MGF's above-mentioned unilateral rate increase filings until a new contractual agreement is executed and becomes effective. Additionally, MGF seeks payment at the minimum rate under Opinion No. 749 from January 1, 1976 through July 1, 1982, the day before the unilateral rate increases became effective.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-12221 Filed 5-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-28-003]

Panhandle Eastern Pipe Line Co.; Change in Tariff

May 2, 1983.

Take notice that on April 29, 1983 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Forty-Fifth Revised Sheet No. 3-A.

Twenty-Second Revised Sheet No. 3-B.

The proposed effective date of these tariff sheets is June 1, 1983.

These revised tariff sheets reflect a reduced PGA rate adjustment of 63.78¢ per Dt, as follows:

(1) A 21.20¢ per Dt decrease resulting from Panhandle's projected reduced gas purchase costs; and

(2) A 44.62¢ per Dt decrease in the recovery of amounts in the Deferred Purchased Gas Cost Account, which reflects a proposed amortization over a three-year period of the deferred purchased gas cost account; and

(3) A 2.04¢ increase in the Deferred Purchased Gas Cost Carrying Charge.

Panhandle states that this proposed rate reduction represents a revision of the PGA rate adjustment which became effective March 1, 1983 pursuant to the Commission's Order dated February 28, 1983, in Docket No. TA83-1-28-001 (PGA83-2, IPR83-1, DCA83-1, TT83-1 and ANGTS83-1), and reflects significant changes which have occurred, and are anticipated to occur, in Panhandle's purchase gas patterns and deferred purchased gas cost account.

Specifically, the major changes in gas purchase costs, and the significant revisions in the methods of recovering those costs through this proposed PGA include:

(1) Reduction in the cost of Canadian gas to reflect the new border price of \$4.40 per MMBtu.

(2) Reduction in the volume of Canadian gas purchased from Canadian suppliers and delivered to Panhandle by the Northern Border Pipeline System.

(3) Changes in the purchase pattern of Panhandle's domestic gas supplies

involving increased proportions of purchased gas from low cost (Section 104 and Section 106) sources and lower volumes of gas from other NGPA categories.

(4) Reduction in Panhandle's purchases from its pipeline supplier, Trunkline Gas Company, in order to permit a larger portion of system requirements to be obtained from domestic field and plant purchases, utilizing the methodology of the Docket No. RP81-103 settlement.

(5) Reduction in the deferred account currently being recovered, through amortization over a 36-month period of the balance remaining at the time this PGA rate adjustment will take effect.

Panhandle further states that the purpose of this program is to reverse the upward trend in Panhandle's gas supply costs and rates to its resale customers and to provide an immediate reduction in rates of 64 cents per Dt that will assist the customers in retaining their market, and enhancing their purchases from Panhandle.

The reduced volumes that Panhandle's resale customers are presently purchasing and projected for the next two to three years results in system requirements substantially lower than Panhandle's take-or-pay obligations to its suppliers. This filing, along with other programs being pursued by Panhandle, are intended to bring these factors more closely into balance.

Panhandle is vigorously pursuing these programs to assist its customers in retaining and restoring their markets in an effort to turn around the diminution of volumes to be purchased from Panhandle. This filing is designed to expedite the passthrough of those programs.

In order to facilitate relief for the resale customers, promptly and with a minimum of procedural complexity, Panhandle requests waiver of several requirements in the normal PGA and tariff procedures. All necessary waivers are hereby respectfully requested. These include:

(a) Waiver of the twice a year PGA limitation in order to permit this intermediate PGA filing to become effective June 1, 1983. As the Commission is aware, the normal PGA rate adjustment dates for Panhandle are March 1 and September 1.

(b) Waiver of the 45 days' notice period for PGA rate adjustments specified in § 18.1 of Panhandle's tariff, in order to bring the benefits of the lower rates to the resale customers as soon as practicable.

(c) Waiver of the portion of § 18.2 of Panhandle's tariff that calls for historical gas purchase patterns and sales volumes in the computation of the PGA rate adjustment, in order to reflect the projected sales volumes and the proposed change in gas purchase patterns upon which a portion of this rate reduction is based.

(d) Waiver of the provisions of the PGA tariff and regulations to permit amortization of the deferred purchased gas cost account over a period of 36 months, in order to smooth out the unusually large deferred balance presently being recovered in the PGA that became effective March 1.

Panhandle states that its representatives are available to respond to inquiries concerning the material transmitted herewith.

Copies of this letter and enclosure are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 13, 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 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. 83-12222 Filed 5-5-83; 8:45 a.m.]
BILLING CODE 6717-01-M

[Docket No. EL83-20-000]

The Town of Highlands, North Carolina, Haywood Electric Membership Corporation, and North Carolina Electric Membership Corp. v. Nantahala Power & Light Co.; Filing

May 2, 1983.

Take notice that on April 13, 1983, pursuant to Rules 206, 212 and 217 of the Commission's Rules of Practice and Procedure, and Article II of the Settlement Agreement in *Nantahala Power & Light Co., Docket No. ER 80-574, which was accepted by the Commission* on November 16, 1981, the Town of Highlands, North Carolina ("Highlands"), Haywood Electric

Membership Corporation and North Carolina Electric Membership Corporation ("Coops") filed a complaint requesting that the Commission order revision of Nantahala's PL-(COSAC) Tariff beginning March 1, 1981 to conform with the Commission's modification of Nantahala's energy entitlements under the 1971 Apportionment Contract for wholesale ratemaking purposes in Opinion No. 139, *Nantahala Power & Light Co.*, 19 FERC 61,152 (May 14, 1982), and order refunds of amounts collected since March 1, 1981 based on Nantahala's use of the 1971 Apportionment Contract without modification for ratemaking purposes.

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 June 1, 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. 83-12223 Filed 5-5-83; 8:45 a.m.]
BILLING CODE 6717-01-M

[Project No. 3474-002, et al.]

Lake Junaluska Assembly, et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

- a. Type of Application: Case Specific Exemption—5 MW or Less.
- b. Project No.: 3474-002.
- c. Date Filed: January 21, 1983.
- d. Applicant: Lake Junaluska Assembly.
- e. Name of Project: Lake Junaluska.
- f. Location: Haywood County, North Carolina.
- g. Filed Pursuant to: 18 CFR Part 4 Subpart K (1981).
- h. Contact Person: Mr. Lawrence Braxton, Business Manager, Lake Junaluska Assembly, The United Methodist Church, Southeastern Jurisdiction, Lake Junaluska, North Carolina 28745.

i. Comment Date: June 13, 1983.

j. Description of Project: The proposed project consist of: (1) a reservoir with a storage capacity of 2,533 acre-feet and a surface area of 189 acres at power pool elevation of 2581.2 NGVD; (2) a concrete dam that is 550 feet long and 43 feet high at its maximum section; (3) a concrete powerhouse which will contain 3 generating units rated at 95.5 kW, 164 kW, and 280 kW, respectively, for a total installed capacity of 439.5 kW; and (4) appurtenant facilities. The Applicant estimates the average annual energy output to be 2,807,890 kWh.

k. This notice also consists of the following standard paragraphs: A1, B, C, and D3a.

2a. Type of Application: Application for License (under 5 MW).

b. Project No: 4117-001.

c. Date Filed: March 23, 1983.

d. Applicant: The Metropolitan District.

e. Name of Project: Colebrook Project.

f. Location: On the West Branch of the Farmington River, in Litchfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Bernard A. Batycki, District Manager, The Metropolitan District, 555 Main Street, Hartford, Connecticut 06101.

i. Comment Date: July 1, 1983.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Colebrook Dam and Colebrook River Lake and would consist of: (1) new trashracks at the existing intake structure; (2) modification of the outlet conduit and portal to accommodate project flows and pressures; (3) a new powerhouse with an installed capacity of 2,500 kW at the downstream toe of the dam embankment; and (4) other appurtenances. Applicant estimates an average annual generation of 8,500,000 kWh. This application was filed during the term of Applicant's preliminary permit for the Colebrook Project No. 4117-000.

k. Purpose of Project: Project energy would be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A2, B, C and D1.

3a. Type of Application: Exemption from License—5 MW or Less.

b. Project No: 6276-002.

c. Date Filed: November 23, 1982.

d. Applicant: MacGregor Downs, Inc.

e. Name of Project: Lockville Dam.

f. Location: Chatham and Lee Counties, North Carolina.

g. Filed Pursuant to: 18 CFR Part 4 Subpart K (1982).

h. Contact Person: Mr. Pete Reynolds, MacGregor Downs, Inc., P.O. Box 790, Cary, North Carolina 27511.

i. Comment Date: June 13, 1983.

j. The proposed project would consist of: (1) an existing reservoir with a surface area of approximately 50 acres and a storage capacity of approximately 400 acre-feet at power pool elevation of 180 feet m.s.l.; (2) an existing concrete dam that is approximately 600-feet long and 13-feet high; (3) an existing concrete and brick powerhouse which would contain two proposed generating units rated at 880 kW each; (4) a proposed 23 kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual generation would be 7.65 GWh.

k. This notice also consists of the following standard paragraphs: A1, B, C, and D3a.

a. Type of Application: License (5 MW or Less).

b. Project No: 6783-000.

c. Date Filed: October 20, 1982.

d. Applicant: Enviro Hydro, Inc.

e. Name of Project: Butter Creek.

f. Location: On Butter Creek, near Hyampon, in Trinity County, California, and utilizing Trinity National Forest lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: H.L. Pete Childers, Enviro Hydro, Inc., 9200 Shanley Lane, Auburn, California 95603.

i. Comment Date: June 13, 1983.

j. Competing Application: Project No. 4396-000, Date Filed: March 23, 1983, Notice Issued: April 29, 1981.

k. Description of Project: The proposed project would consist of: (1) a 3-foot-high concrete weir at elevation 2,250 feet; (2) a 6,800-foot-long, 48-inch-diameter pipeline/penstock; (3) a powerhouse at elevation 1,600 feet containing one generating unit rated at 2,000 kW; (4) an access road; and (5) a 4-mile-long transmission line. The average annual energy generation is estimated to be 7 million kWh.

l. Purpose of Project: Power will be sold to the Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A2, B, C and D1.

a. Type of Application: Preliminary Permit.

b. Project No: P-6994-000.

c. Date Filed: January 11, 1983.

d. Applicant: City of Memphis, Tennessee.

e. Name of Project: H.M. Bessie.

f. Location: the Bessie Cutoff area of the Mississippi River, in Lake County,

Tennessee, Fulton County, Kentucky, and New Madrid, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Arnold Fieldman, Mr. Channing D. Strother, Jr., Goldberg, Fieldman & Letham, P.C., 1100 Fifteenth Street, NW., Washington, D.C. 20005, and Ira C. Stanfill, Memphis Light, Gas and Water Division, P.O. Box 430, Memphis, Tennessee 38101.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) the construction of a new channel; (2) a new powerhouse containing 25 generating units having a total rated capacity of 100 MW; (3) a new 181-kV, 5.6-mile long transmission line and an upgrading of an existing 69-kV 24-mile long transmission line; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 641 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be the Tennessee Valley Authority.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$14,000.

6a. Type of Application: Preliminary Permit.

b. Project No: 7034-001.

c. Date Filed: April 4, 1983.

d. Applicant: Olympus Energy Corporation.

e. Name of Project: Hunger Mountain Project.

f. Location: On North Fork Calawah River in Clallam County, Washington, within the Olympic National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jerome E. Livingston, President, 201-215th Street, SE., Bothell, Washington 98011 and Dr. Brad Shea, Western Eco-Systems Technology, Inc., 204-215th St. SE., Bothell, Washington 98011.

i. Comment date: July 7, 1983.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high diversion structure at elevation 1,925 feet; (2) a 12-inch-diameter, 11,500-foot-long pipeline-penstock system; (3) a powerhouse containing two generating units with a total rated capacity of 4,040 kW, operating under a head of 825 feet; (4) a tailrace discharging directly into the North Fork Calawah River; and (5) a 3.5-mile-long, 35-kV transmission line. The estimated average annual energy output is 25 million kWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 30 month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these feasibility studies and preparing an application for an FERC license is \$150,000.

k. Purpose of Project: Project power will be sold to a local service utility or Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No: 7037-000.

c. Date Filed: January 31, 1983.

d. Applicant: Public Utility District No. 1 of Okanogan County.

e. Name of Project: Shakers Bend.

f. Location: On the Similkameen River, near the Town of Oroville, in Okanogan County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., 791(a)-825(r).

h. Contact Person: Harlan Warner, Manager, Okanogan County PUD No. 1, P.O. Box 912, Okanogan, Washington 98840.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) a 140-foot-high concrete dam; (2) a 7,500-acre reservoir with a storage capacity of 162,000 acre-feet at normal reservoir elevation 1,175 feet; (3) a powerhouse near the base of the dam containing one or two generating units with a total installed capacity of 18 MW; and (4) a 5.3-mile-long transmission line. The average annual energy generation is estimated to be 80 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering, environmental, and feasibility studies and prepare an FERC license application at a cost of one million dollars. No new roads would be required to conduct the studies.

k. Purpose of Project: Power will be used by the Applicant.

l. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C, D2.

8a. Type of Application: Exemption for Small Conduit Hydroelectric Facility.

b. Project No: 7055-000.

c. Date Filed: February 2, 1983, amended March 18, 1983.

d. Applicant: City of Monroe, Utah.

e. Name of Project: Monroe Pumping and Power Generating Station.

f. Location: Monroe Creek, Sevier County, Utah.

g. Filed Pursuant to: 18 CFR Part 4 Subpart J (1980), Implementing Section 30 of the Federal Power Act (Act).

h. Contact Person: Honorable Myron Madsen, Mayor, Monroe City, 10 North Main Street, Monroe, Utah 84754.

i. Comment Date: June 13, 1983.

j. Description of Project: The proposed project would utilize an existing irrigation system and would include: (1) a pump and power generating building housing a 40-kW generator-pump unit and a 57-kW generator unit; (2) an addition of approximately 1,900 feet of 15-inch diameter PVC pipe from the existing pressure irrigation system to the pump and power generating building; (3) an addition of a 15-inch diameter PVC line connecting into the existing system near the existing reservoir and extending to the pump and power generating building; (4) the existing Monroe South Bend Canal; (5) an existing reservoir with a storage capacity of 11 acre-feet; and (6) appurtenant facilities. Average annual generation is estimated to be 500,000 kWh. Average head would be 145 feet. The system would be manually operated.

k. Purpose of Project: All energy would be used by the local municipal utility, Monroe City Power.

l. This notice also consists of the following standard paragraphs: D3b, B and C.

9a. Type of Application: Preliminary Permit.

b. Project No.: 7064-000.

c. Date Filed: February 8, 1983 and supplemented April 7, 1983.

d. Applicant: J. Michael Scott.

e. Name of Project: Bear Creek Hydro Project.

f. Location: Gardiner, Park County, Montana on the Bear Creek.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: J. Michael Scott, No. 7, 503 North Black, Bozeman, Montana 54715.

i. Comment Date: July 7, 1983.

j. Description of Project: The proposed project would be located entirely within

the U.S. Forest Service, Gallatin National Forest, and consist of: (1) proposed intake structure located at elevation 6160 msl; (2) a new steel penstock approximately 2 miles long; (3) a proposed powerhouse with a total installed capacity of 520 kW; (4) a proposed tailrace; (5) a new transmission line approximately .15 miles; and (6) appurtenant facilities. All power generated would be sold to Montana Power Company or a local utility company.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

10a. Type of Application: Preliminary Permit.

b. Project No: 7066-000.

c. Date Filed: February 9, 1983.

d. Applicant: Burlington Street Associates.

e. Name of Project: Burlington Street Dam.

f. Location: Johnson County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. T. B. Forbes, Burlington Street Associates, P.O. Box 421, Mercer Island, Washington 98040, and Mr. Joel Rector, Attorney, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) an existing reservoir with a surface area of 110 acres and storage capacity of 640 acre-feet; (2) an existing concrete dam that is approximately 20 feet high and 284-feet long; (3) an existing concrete conduit which is 9-feet by 18-feet; (4) an existing powerhouse which would consist of 2 generating units rated at 1 MW each for a total installed capacity of 2 MW; and (5) appurtenant facilities. The Applicant estimates the average annual energy output to be 8,760,000 kWh.

k. Purpose of Project: The Applicant proposes to sell the generated power to the University of Iowa.

l. This notice consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

11a. Type of Application: License (Over 5 MW).

b. Project No: 7099-000.

c. Date Filed: February 23, 1983.

d. Applicant: The City of Gillette, Wyoming.

e. Name of Project: Lake Elwell Hydroelectric Power.

f. Location: On the Marias River in Liberty County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Alan Tandy, City Administrator, City of Gillette, P.O. Box 3003, Gillette, Wyoming 82716.

i. Comment Date: June 13, 1983.

j. Competing Application: Project No. 6432-001, Date Filed: July 13, 1982; Project No. 7022-000, Date Filed: January 25, 1983.

k. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation Tiber Dam and consist of: (1) an existing 1,600-foot-long, auxiliary outlet works; (2) a proposed powerhouse containing an installed generating capacity of 14 MW; (3) a proposed 1-mile-long, 115-kV transmission line; and (4) appurtenant facilities. The project would utilize approximately 11 acres of U.S. Government land. The Applicant estimates that the average annual energy generation will be 64 GWh.

l. This notice also consists of the following standard paragraphs: A3, B, C, and D1.

12a. Type of Application: Preliminary Permit.

b. Project No: 7101-000.

c. Date Filed: March 16, 1983.

d. Applicant: Eric H. Lange.

e. Name of Project: Plainwell No. 1 Water Power Project.

f. Location: Kalamazoo River, Allegan County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Eric H. Lange, 800 Stephenson Highway, Troy, Michigan 48064.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) the existing Plainwell No. 1 dam, a 175 foot long earth embankment and concrete structure about 20 feet high, and owned by the Michigan Department of Natural Resources; (2) a proposed powerhouse with an installed capacity of 1200 kW; (3) a proposed short transmission line to connect with the existing power grid; and (4) appurtenant equipment. Applicant estimates the average annual power production to be 6.0 GWh.

k. Purpose of Project: Applicant proposes to sell the project power to Consumers Power Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

13a. Type of Application: 5 MW Exemption.

b. Project No: 7118-000.

c. Date Filed: March 3, 1983.

d. Applicant: Cumberland Power Corporation.

e. Name of Project: Smelt Hill Project.

f. Location: On the Presumpscot River, near the town of Falmouth, Cumberland County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, Pub. L. 96-

294, 94 Stat. 611 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Clinton Smith, Cumberland Power Corporation, P.O. Box 340, N. Windham, Maine 04062.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) an existing 151-foot-long, 14-foot-high timber crib dam to be repaired and fitted with 4-foot-high flashboards; (2) an existing 40-foot-long sluice gate section containing 5 sluice gates; (3) an existing 16-acre reservoir with a normal maximum water surface elevation of 21.2 feet m.s.l.; (4) an existing canal intake and trashrack structure; (5) an existing 26-foot-wide, 285-foot-long power canal; (6) an existing powerhouse foundation forming the last 150 feet of the intake canal wall to be repaired and a new powerhouse constructed to contain 5 turbine-generators with a total rated capacity of 1,125 kW; (7) an existing fishway located near the east abutment and a new fishway to be constructed at the end of the power canal; (8) a transmission line; and (9) appurtenant facilities.

k. Purpose of Project: Energy produced at the project would be utilized by the Applicant with excess energy sold to the local utility.

l. This notice also consists of the following standard paragraphs: A1, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

14a. Type of Application: Preliminary Permit.

b. Project No: 7130-000.

c. Date Filed: March 9, 1983.

d. Applicant: HY-TECH Company.

e. Name of Project: Shell Creek.

f. Location: Shell Creek, Big Horn County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 91(a)-825(r).

h. Contact Person: Mr. Carl W. Haywood, 2109 Broadview Drive, Lewiston, Idaho 83501.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) a proposed concrete diversion structure, 8 feet high and 60 feet long; (2) a proposed penstock, 10,000 feet long; (3) a proposed powerhouse containing 3 generating units with a total installed capacity of 12,000 kW; (4) a proposed transmission line, approximately 3 miles long; and (5) appurtenant facilities. Applicant

estimates the total annual power production to be 24.0 GWh.

k. Purpose of Project: Applicant states that the project power will be sold to Big Horn Rural Electric Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

14a. Type of Application: Preliminary Permit.

b. Project No: 7131-000.

c. Date Filed: March 9, 1983.

d. Applicant: HY-TECH Company.

e. Name of Project: Tongue River.

f. Location: Tongue River, Sheridan County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Carl W. Haywood, 2109 Broadview Drive, Lewiston, Idaho 83501.

i. Comment Date: July 7, 1983.

j. Description of Project: The proposed project would consist of: (1) a proposed reinforced concrete diversion structure, approximately 10 feet high and 150 feet long; (2) a proposed 72-inch diameter, 5,000 feet long penstock; (3) a proposed 8-foot diameter 12,000 feet long tunnel; (4) a proposed powerhouse with a 36 MW generating unit; (5) a proposed 15-mile long transmission line to connect with the existing power grid; (6) appurtenant facilities. Applicant estimates the total annual power production to be 155.0 GWh.

k. Purpose of Project: Applicant proposes to sell the project power to Montana-Dakota Utility Company or to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No: 7133-000.

c. Date Filed: March 10, 1983.

d. Applicant: HY-TECH Company.

e. Name of Project: North Piney Creek.

f. Location: North Piney Creek, Sheridan County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Carl W. Haywood, 2109 Broadview Drive, Lewiston, Idaho 83501.

i. Comment Date: July 7, 1983.

j. Description of Project: The proposed project would consist of: (1) a proposed concrete diversion structure, 8 feet high and 60 feet long; (2) a proposed penstock, approximately 12,000 feet long; (3) a proposed powerhouse containing 4 generating units with a total installed capacity of 8,000 kW; (4) and (5) Appurtenant facilities. Applicant estimates the annual power production to be 10.5 GWh.

k. Purpose of Project: Applicant states that the project power will be sold to Montana-Dakota Utility Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

17a. Type of Application: Preliminary Permit.

b. Project No: P-7138-000.

c. Date Filed: March 10, 1983.

d. Applicant: Springfield Associates No. 3.

e. Name of Project: Hills Creek.

f. Location: On Hills Creek in Lane County, Oregon, within the Willamette National Forest near the Town of Oakridge.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, WA 98040 with a copy to: Mr. Joel Rector, Attorney at Law, 4832 Colony Circle, Salt Lake City, UT 84117.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high, 200-foot-long diversion dam at approximately elevation 2,000 feet; (2) a 5,000-foot-long steel penstock; (3) a powerhouse containing a single 2.5-MW generating unit; and (4) a 5.5-mile-long, 34.5-kV transmission line. The project would have an average annual generation of 10,660 MWh.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a 24-month preliminary permit to conduct engineering, economic, and environmental feasibility studies and to prepare an application for a FERC license. No new roads would be constructed to conduct the studies. Applicant estimates that the studies would cost \$150,000.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

18a. Type of Application: Preliminary Permit.

b. Project No: 7139-000.

c. Date Filed: March 10, 1983.

d. Applicant: Springfield Associates #4.

e. Name of Project: Wiley Creek.

f. Location: On Wiley Creek in Linn County, Oregon within the Willamette National Forest near the Town of Sweet Home.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, Washington 98040 with a copy to: Mr. Joel Rector, Attorney at Law, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) a 40-foot-high, 200-foot-long dam at elevation 1,060 feet; (2) a reservoir having a surface area of 3 acres and a storage capacity of 70 acre-feet; (3) a 750-foot-long penstock; (4) a powerhouse containing a single 1.7-MW generating unit with an average annual generation of 6,700 MWh; and (5) a 7-mile-long, 34.5-kV transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic, and environmental feasibility studies and to prepare an FERC license application. These studies would include core borings and test pits at the dam site, penstock route, and powerhouse site. No new roads would be constructed to conduct the studies and all disturbed lands would be restored. Applicant estimates that the studies would cost \$150,000.

k. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C and D2.

19a. Type of Application: Preliminary Permit.

b. Project No: 7140-000.

c. Date Filed: March 10, 1983.

d. Applicant: Springfield Associates #1.

e. Name of Project: North Fork #1.

f. Location: On the North Fork of Willamette River in Lane County, Oregon within the Willamette National Forest near the Town of Westfir.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, Washington 98040 with a copy to: Mr. Joel Rector, Attorney at Law, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: July 5, 1983.

j. Description of Project: Two options for project development would be investigated. Option 1 would consist of: (1) a 10-foot-high, 200-foot-long diversion structure at elevation 1,540 feet; and (2) a 7,000-foot-long steel penstock. Option 2 would consist of: (1) an 80-foot-high, 800-foot-long dam at elevation 1,540 feet; (2) a reservoir having a surface area of 30 acres and a storage capacity of 1,100 acre-feet; and (3) an undetermined length of penstock. Each option would include: (1) a powerhouse containing a single generating unit with a capacity of 11.4 MW and an average annual generation of 44,900 MWh; and (2) an 11.5-mile-long, 34.5-kV transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a 24-month preliminary permit to conduct engineering, economic, and

environmental studies to ascertain project feasibility and to prepare an application for an FERC license. Those studies would include core borings and test pits at the dam site, penstock route, and powerhouse site. No new roads would be constructed to conduct the studies and all disturbed lands would be restored. Applicant estimates the cost of the above activities to be \$150,000.

k. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C and D2.

20a. Type of Application: Preliminary Permit.

b. Project No: 7152-000.

c. Date Filed: March 17, 1983.

d. Applicant: Seward Construction Co., Inc., Zoes J. Dimos and James C. Katsekas.

e. Name of Project: Lyman Water Power Project.

f. Location: On Connecticut River in Coos County, New Hampshire, and Essex County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Gus Garceau, Seward Construction Co., P.O. Box 1011, Portsmouth, New Hampshire 03801, and Zoes J. Dimos and James C. Katsekas, 209 Walnut Street, Manchester, New Hampshire 03104.

i. Comment Date: July 1, 1983.

j. Description of Project: The proposed run-of-river project would consist of: (1) a breached dam, approximately 25 feet high and 500 feet long, to be reconstructed; (2) a reservoir having minimal pondage; (3) a new penstock, approximately 2,000 feet long; (4) a new powerhouse to be constructed at an old powerhouse site and to contain turbine-generator units having a total rated capacity of 4,200 kW; (5) a tailrace returning flow to the Connecticut River approximately 2,000 feet downstream of the dam; (6) a new transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 17,000,000 kWh. Ownership of the site is unknown, at present, and the Applicant is investigating. Project energy would be sold locally.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an

application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$100,000.

21a. Type of Application: License (under 5 MW).

b. Project No: 7153-000.

c. Date Filed: March 21, 1983.

d. Applicant: SNC Hydro Inc.

e. Name of Project: Victory Mills Project.

f. Location: Fish Creek in Saratoga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: H.W. Pearson, SNC Hydro, Inc, c/o The SNC Corporation, 219 East 42nd Street, New York, New York 10017.

i. Comment Date: July 1, 1983.

j. Description of Project: The proposed project would consist of: (1) a new concrete weir dam varying from 4 to 6 feet in height and 220 feet long; (2) an existing sluice dam 9 feet high and 20 feet long; (3) a reservoir having a surface area of 4.3 acres, a storage capacity of 18 acre-feet and normal water surface elevation of 189.0 feet m.s.l.; (4) rehabilitation of the existing intake canal; (5) three steel penstocks, one 5 feet in diameter and 20 feet long, one 6 feet in diameter and 90 feet long and one 4 feet in diameter and 40 feet long; (6) an existing powerhouse with three new generating units having a total installed capacity of 1,237 kw; (7) rehabilitation of the existing tailrace canal; (8) an existing 4.8 kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 4,500,000 kWh. Estimated construction cost is \$450,000. The existing retired facilities are owned by the Niagara Mohawk Power Corporation.

k. Purpose of Project: All project energy generated would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A2, B, C and D1.

22 a. Type of Application: Preliminary Permit.

b. Project No: 7167-000.

c. Date Filed: March 21, 1983.

d. Applicant: Olympus Energy Corporation.

e. Name of Project: Sitkum, River Project.

f. Location: On the Sitkum River, near Forks, in Clallam County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jerome E. Livingston, 201-215th Street, SE., Bothell, Washington 98011.

i. Comment Date: July 7, 1983.

j. Description of Project: The proposed run-of-river project would consist of: (1) a 10-foot-high, 60-foot-wide diversion structure on the Sitkum River, approximately 8.6 miles upstream from its confluence with South Fork Calawah River; (2) a 12,000-foot-long, 54-inch-diameter combination pipeline-penstock; (3) a powerhouse, near the confluence of Sitkum River and Brandberry Creek, containing two turbine generators with a total installed capacity of 8.0 MW and producing an average annual energy output of 56 GWh; and (4) appurtenant facilities. The project is located entirely within the Olympic National Forest. Project power would be sold to a public utility.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 30-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at \$150,000.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

23 a. Type of Application: Preliminary Permit.

b. Project No: 7169-000

c. Date Filed: March 23, 1983.

d. Applicant: The Colorado Water Resources and Power Development Authority.

e. Name of Project: Dolores Pumped Storage Project.

f. Location: Plateau Creek in Montezuma County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ival V. Goslin, Executive Director, and Mr. W. D. Farr, Chairman, Colorado Water Resources and Power Development Authority, 1390 Logan Street, Suite 217, Denver, Colorado 80203.

i. Comment Date: July 6, 1983.

j. Description of Project: The proposed pumped-storage project would consist of: (1) a 15,500 acre-foot forebay, at 8,013 feet m.s.l., formed by (2) a 6,200-foot long, 113-foot high dam and a 700-foot long, 20-foot high dike—both of earthfill construction with provision for a 15,500 cfs emergency spillway; (3) an intake structure and two penstocks, each 21 feet in diameter and 5,340 feet in length, with horizontal and vertical alignments leading to (4) an underground powerplant containing two 500 MW pump-turbines for a total rated capacity of 1,000 MW; (5) two tailrace tunnels, each 38 feet in diameter and 850 feet in length, connecting to (6) a 17,000 acre-foot afterbay, at 7,165 feet m.s.l., formed by (7) an 800-foot long, 240-foot high concrete arch dam with provision for a 22,000 cfs spillway; (8) two 345-kV

transmission lines, each 6-1/2 miles long; and (9) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 800 million kWh. Energy would be marketed through various public and private utilities. Feasibility studies will be conducted jointly with the U.S. Bureau of Reclamation.

k. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit for a period of 3 years during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$700,000.

24a. Type of Application: Exemption from Licensing (5MW or less).

b. Project No: 7172-000.

c. Date Filed: March 23, 1983.

d. Applicant: Douglas Water Power Company.

e. Name of Project: Dry Ridge Hydroelectric.

f. Location: On an unnamed tributary of the Roaring River in Clackamas County, Oregon, within Mount Hood National Forest.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2706 as amended).

h. Contact Person: Mr. Douglas Pagar, Douglas Water Power Company, 540 East First Street, Gladstone, Oregon 97027.

i. Comment Date: June 16, 1983.

j. Description of Project: The proposed project would consist of: (1) a 2.5-foot-high, 24-foot-long wood and concrete diversion/intake structure at elevation 3200 feet; (2) a 24-inch-diameter, 5200-foot-long penstock; (3) a powerhouse at elevation 1040 feet containing one turbine and two generators with a total rated capacity of 5.0 MW and an average annual generation of 12.24 GWh; (4) a 10-foot-long tailrace to the Clackamas River; and (5) an 8000-foot-long transmission line connecting to an existing Pacific Gas and Electric Company line.

k. This notice also consists of the following standard paragraphs: A1, B, C, and D3a.

25a. Type of Application: Preliminary Permit.

b. Project No: 7178-000.

c. Date Filed: March 29, 1983.

d. Applicant: Ronald F. and Carlene A. Ott.

e. Name of Project: Arbuckle Mountain Hydropower.

f. Location: On Middle Fork Cottonwood Creek in Shasta County, California near the Town of Platina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ronald F. Ott, Ott Water Engineers, Inc., 2334 Washington Ave., Redding, California 96001.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high, 120-foot-long diversion structure at elevation 1,900 feet; (2) a 66-inch-diameter, 1,200-foot-long conduit or channel; (3) three 36-inch-diameter, 50-foot-long penstocks; (4) a powerhouse containing three generating units with a combined rated capacity of 300 kW, operating under a head of 30 feet; and (5) a 12.5-kV transmission line tying into an existing Pacific Gas and Electric Company line. The estimated annual energy output would be 1 million kWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 24 month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is \$50,000.

k. Purpose of Project: Project power will be sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

26a. Type of Application: Preliminary Permit.

b. Project No: 7184-000.

c. Date Filed: March 30, 1983.

d. Applicant: Richard A. and Carole K. Sorenson.

e. Name of Project: Sorensen Hydroelectric.

f. Location: On Warm Springs Creek in Custer County, Idaho near the Town of Stanley, within the Sawtooth National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Eric Schulz, CH2M Hill, 700 Clearwater Lane, P.O. Box 8748, Boise, Idaho 83707.

i. Comment Date: July 5, 1983.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high, 15-foot-long diversion-intake structure at elevation 5,900 feet (2) a 16-inch-diameter, 3,000-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of

30 kW, operating under a head of 90 feet; and (4) a 3,500-foot-long buried transmission line. The estimated annual energy output would be 250,000 kWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 24 month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is \$2,500.

k. Purpose of Project: Project Power will be utilized on-site by the Applicants to serve miscellaneous electrical loads at the Robinson Bar Ranch.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

27a. Type of Application: Preliminary Permit.

b. Project No: 7199-000.

c. Date Filed: April 7, 1983.

d. Applicant: City of Strawberry Point, Iowa.

e. Name of Project: Delhi Milldam.

f. Location: Delaware County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Gary C. Peterson, Shive-Hattery and Associates, P.O. Box 1803, Cedar Rapids, Iowa 52406.

i. Comment Date: July 1, 1983.

j. Description of Project: The proposed project would consist of: (1) an existing reservoir with an area of 50 acres and a storage capacity of 880 acre-feet at power pool elevation of 896 feet m.s.l.; (2) an existing earth filled dam that is 58.5-feet high and 700-feet long; (3) an existing powerhouse that will contain 1 generating unit rated at 600 kW; (4) a proposed transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,628,000 kWh.

k. Purpose of Project: The Applicant anticipates using all the energy generated at the project.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

Competing Applications

A1. Exemptions for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested

person to file the competing license application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1982). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d).

A2. Applications for License—Anyone desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either the competing application itself (see 18 CFR 4.33 (a) and (d), and Part 16, where applicable) or a notice of intent (see 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or §§ 4.101 to 4.104 (1982).

A3. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for license, exemption or preliminary permit, or notices of intent to file competing applications, will be accepted for filing in response to this notice (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate). Any application for license or exemption from licensing, or notice of intent to file a license or an exemption application, must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

Preliminary Permits

A4a. Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30-days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A4b. No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or there are proposed to be major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to

file such an application (see 18 CFR 4.30 to 4.33 (1982)).

A4c. The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before the specified comment date for the particular application. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

A4d. Submission of a timely notice of intent to file an application for preliminary permit allows an interested person to file an acceptable competing application for preliminary permit no later than 60 days after the specified comment date for the particular application.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the commission's rules may become party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative

of the Applicant specified in the particular application.

Agency Comments

D1. License applications (5 MW or less capacity)—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Preliminary permit applications—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3. Exemption applications (5 MW or less capacity)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency

does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Exemption applications (Conduit)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 3, 1983.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-11982 Filed 5-5-83; 8:45 am]

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Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of March 28 Through April 1, 1983

During the week of March 28 through April 1, 1983, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Gentry & Wagner, 3/31/83; HFA-0123

The DOE issued a Decision and Order concerning an Appeal from a denial of a Freedom of Information Act (FOIA) request by the FOIA Officer of DOE's Oak Ridge

Operations Office. The Appellants sought the release of the transcript of a Merit Systems Protection Board proceeding, a copy of which was held by the DOE. On appeal, the Office of Hearings and Appeals determined that the document is an agency record within the purview of the FOIA and not exempt from disclosure under any of the Act's provisions. Accordingly, the Appeal was granted.

Motions for Discovery

Barkett Oil Co., Anchor Distributors, Inc., Lawrence Oil Co., Office of Enforcement, 4/1/83; BRD-1342, BRD-1357, HRD-0006, HRD-0059, HRD-0060, HRD-0061, HRZ-0135

Barkett Oil Company and two affiliated firms, Lawrence Oil Company and Anchor Distributors, Inc., filed Motions for Discovery in connection with a series of Proposed Remedial Orders issued to them by the Economic Regulatory Administration (ERA). In denying the motions, OHA held that contemporaneous construction discovery was not appropriate concerning various aspects of the reseller-retailer pricing regulations and the policies and audit practices used by the agency in implementing those regulations. The subjects on which discovery was denied included: (1) the equal application rule, (2) netting of overcharges against alleged "undercharges," (3) inclusion of the non-product cost increase allowance in maximum lawful selling prices calculated under the acquisition rule, 10 CFR 212.111(c), (4) calculation of banks of unrecouped costs, (5) the sequence of recovery of product and non-product cost increases, (6) establishment of pricing periods, and (7) the pricing rules applicable to sales of unleaded gasoline. The OHA also denied the firms' requests for discovery concerning gasoline prices charged by retailers other than Barkett and its affiliates, the agency's standards governing assessment of interest on overcharges, and whether the agency abused its discretion by auditing Barkett and its affiliates.

In addition, the OHA granted a motion filed by ERA to withdraw portions of certain of the PROs insofar as they alleged overcharges on sales of unleaded gasoline. The PROs involved had been issued prior to Ruling 1981-3, which stated that the agency would apply 10 CFR 212.93(a) rather than 10 CFR 212.112 in determining the maximum lawful selling prices which resellers and retailers could charge for unleaded gasoline. OHA concluded that to the extent that Ruling 1981-3 might alter the ERA's calculations, ERA should not be precluded from modifying those calculations.

Interlocutory Orders

ERA/Cordele Operating Company, 4/1/83; HRZ-0119

The Economic Regulatory Administration (ERA) filed a Motion to Join Additional Parties in connection with an enforcement proceeding pending before the Office of Hearings and Appeals, *Cordele Operating Company*, Case No. HRO-0069 (filed September 9, 1982). Pursuant to that Motion, the ERA sought an order under 10 CFR 205.199G to join Mr. W. L. Pickens, Mr. H. J. Porter and the Wheelock Oil Company as

parties to the Cordele proceeding. Cordele, Pickens, Porter and Wheelock objected to the motion, asserting that the DOE regulations required the ERA to issue new PROs to the additional parties, and that joinder of the additional parties at this stage in the proceeding violates due process. The DOE granted the ERA's motion, finding that it was more administratively efficient to join the parties under Section 205.199G than to issue the parties new PROs. The DOE further found that joinder at this stage of the proceeding did not violate due process.

Office of Special Counsel for Compliance, 3/30/83; HRZ-0094

The Office of Special Counsel for Compliance (OSC) filed a motion to compel Gulf Oil Corporation to produce further corporate state of mind discovery pursuant to the decisions of the Office of Hearings and Appeals in *Office of Special Counsel (Gulf)*, 9 DOE ¶ 84,010 (1982) (*OSC/Gulf I*), and *Office of Special Counsel (Gulf)*, 9 DOE ¶ 82,543 (1982) (*OSC/Gulf II*). OSC's motion related to a Proposed Remedial Order that OSC issued to Gulf on May 1, 1979. In considering OSC's motion, the DOE found that Gulf's response to the corporate state of mind discovery orders was defective in some respects. In particular, the DOE concluded that Gulf: (1) had failed to apply properly the "responsible corporate officer" (RCO) concept articulated in *OSC/Gulf II*; (2) had conducted an inadequate search for documents responsive to two interrogatories OSC had propounded; and (3) had improperly failed to search the personal files of RCOs. Gulf was ordered to submit a modified discovery response to remedy these defects. The DOE, however, did not agree with OSC that Gulf's discovery response was defective in other respects and that OSC needed to depose Gulf officials concerning the conduct of the search. Accordingly, the OSC motion was granted in part.

Refund Applications

Pennzoil Company/Paul Smith Oil, Inc., 4/1/83 RF10-58

On March 10, 1982, the Office of Hearings and Appeals issued a Decision and Order implementing special refund procedures with respect to a \$3,000,000 fund obtained by the DOE through a consent order with Pennzoil Company. See *Office of Special Counsel (Pennzoil)*, 9 DOE ¶ 82,545 (1982). The March 10 Decision stated that the DOE would accept applications for refund filed by purchasers of Pennzoil's covered products during the period March 6, 1973 through December 31, 1980. The present Decision and Order addresses an application for refund filed by an applicant claiming purchases of a covered product in excess of 50,000 gallons per month during the period for which a refund is claimed. In considering the refund application, the DOE determined that the firm was adversely affected by Pennzoil's alleged overcharges and was eligible for a portion of the consent order funds. Accordingly, Paul Smith Oil, Inc.'s application was granted.

Standard Oil Company (Indiana)/Don Grangers Auto et al., 3/30/83; RF21-0854 et al.

The DOE issued a Decision and Order concerning 34 Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 34 applicants should receive a refund based upon the total volume of their Amoco motor gasoline purchases. The refunds granted in this proceeding total \$31,731.

Standard Oil Company (Indiana)/Merle Oil Company Inc. et al., 3/30/83; RF21-0057 et al.

The DOE issued a Decision and Order concerning 67 Applications for Refund filed by wholesalers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 67 applicants should receive a refund based upon the total volume of their Amoco motor gasoline purchases. The refunds granted in this proceeding total \$131,142.

Standard Oil Company (Indiana)/Merle Oil Company Inc. et al., 3/29/83; RF21-0058 et al.

The DOE issued a Decision and Order concerning 75 Applications for Refund filed by resellers of Amoco middle distillates. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 75 applicants should receive a refund based upon the total volume of their Amoco middle distillate purchases. The refunds granted in this proceeding total \$532,587.

Standard Oil Company (Indiana)/Village of Arlington Heights et al., 4/1/83; RF21-131 et al.

The DOE has issued a Decision and Order concerning 27 Applications for Refund from consumers of Amoco motor gasoline. All of these consumers elected to apply for a refund based upon the presumption of injury and formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Each consumer therefore submitted detailed information concerning its Amoco purchase volumes. After analyzing this information, the DOE concluded that each of the 27 applicants should receive a refund based upon the total volume of their Amoco motor gasoline purchases. Accordingly, these applications were granted in full.

Tenneco Oil Company/Kellermeyer Incorporated, 3/30/83; RF7-104

Kellermeyer Incorporated filed an Application for Refund for a portion of the Tenneco Oil Company consent order fund. Kellermeyer formerly sold Tenneco propane on consignment. In its application,

Kellermeyer claimed that Tenneco failed to supply the firm with its propane allocation and as a result Kellermeyer suffered injury due to lost profits. Kellermeyer also alleged that Tenneco overcharged the firm on propane. After analyzing Kellermeyer's claims, the Office of Hearings and Appeals found that Kellermeyer qualified for a refund under the procedures set forth in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982), based on its allocation claim. However, OHA determined that Kellermeyer should not receive a refund based on its price claim since Kellermeyer did not suffer any injury due to the alleged Tenneco overcharges. Accordingly, Kellermeyer's application was granted in part.

Protective Order

Atlantic Richfield Co./Economic Regulatory Administration, 3/28/83; HRJ-0039

The Atlantic Richfield Co. and the Economic Regulatory Administration jointly filed an Application for Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the parties. The DOE granted the application and issued the requested Protective Order as an Order of the Department of Energy.

Dismissals

The following submissions were dismissed:

Name	Case No.
Bearbower Oil Co.	RF21-2741
Duane Bodenheimer	RF21-2472
Braaten Oil Co., Inc.	RF21-0964
Crown Moving & Storage	RF21-1818
Fagen Oil Co.	RF21-0786
Fund for Open Info Accountability	HFA-0125
Vance C. Gary	RF21-2463
H. D. Belt Oil Co.	RF21-2211
Hall's Car Care Center	RF21-1095
Hartigan Oil Co.	RF21-2403
Highway 55 Standard	RF21-1099
Robert Hudspeeth	RF21-2563
Jackson Petroleum Co.	RF21-2380
Donald V. McClarty	RF21-1550
Quickie Transport Co.	RF21-1813
James V. Tyrell	RF21-2297
Robert L. Winberg	RF21-0944

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 83-12139 Filed 5-5-83; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration**Order Confirming, Approving, and Placing Increased Power Rate in Effect on an Interim Basis**

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of power rate order (Sam Rayburn Dam).

SUMMARY: The Assistant Secretary for Conservation and Renewable Energy, under Delegation Order 0204-33, FR 60638 (December 28, 1978), as amended, effective March 19, 1981, has developed, acting by and through the Administrator, Southwestern Power Administration, an increased power rate in the amount of \$1,704,504, an increase of \$316,204 annually, for the sale of power and energy from the Sam Rayburn Dam marketed by the Southwestern Power Administration. The Assistant Secretary has approved the increase and has submitted it to the Federal Energy Regulatory Commission for confirmation and approval and placement into effect on a final basis.

EFFECTIVE DATE: The increased rate is being submitted to the Federal Energy Regulatory Commission for confirmation, approval, and placement into effect on a final basis by June 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Walter M. Bowers, Chief, Division of Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box Drawer 1619, Tulsa, Oklahoma 74101, (918) 581-7529;

Fred A. Sheap, Office of Power Marketing Coordination, Department of Energy, Federal Building, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20585, (202) 633-8336.

Issued in Washington, D.C., April 28, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: Southwestern Power Administration—Sam Rayburn Dam Rate, Order Approving Power Rates for Submission, Rate Order No. SWPA-10, April 28, 1983.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (SWPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December

28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. This rate order is issued pursuant to the delegation to the Assistant Secretary for Conservation and Renewable Energy.

Background

On August 19, 1982, the Southwestern Power Administration (SWPA) published notice in the *Federal Register* (47 FR 36278) that the Administrator had prepared a Current Power Repayment Study and a Revised Power Repayment Study showing the need for additional revenue to meet cost recovery criteria for the Sam Rayburn Dam project. The *Federal Register* Notice was issued in accordance with Title 10, Part 903, Subpart A, of the Code of Federal Regulations entitled, "Procedures for Public Participation in Power and Transmission Rate Adjustments." The *Federal Register* Notice apprised the public that a Public Information Forum would be held September 21, 1982, and a Public Comment Forum would be held October 19, 1982, with written comments to be accepted through November 18, 1982. Both public forums were held in Tulsa, Oklahoma, as scheduled, but there was no attendance by customer groups or other interested parties, and no written comments were received by SWPA through November 18, 1982, or afterward. SWPA attributes lack of formal participation or response to the communication that occurred between SWPA and the customer (Sam Rayburn Dam Electric Cooperative, Inc.) while the repayment studies were being developed. SWPA made a special effort to keep the customer informed as study material was developed in an effort to involve the customer in the ratemaking process. It appears that the additional communication with the customer during study preparation resulted in greater customer acceptance of the proposed rate.

The Revised Power Repayment Study demonstrates the need for a rate increase in the amount of \$316,204 annually. This would increase the existing rate of \$1,388,300 to \$1,704,504 or 22.8 percent. The existing rate was placed in effect June 1, 1979, on an interim basis by the Assistant Secretary for Resource Applications (Assistant Secretary) in Rate Order No. SWPA-2 dated April 12, 1979. The Assistant Secretary approved the rate on an interim basis for a period of five years or until the FERC confirmed and approved the rate on a final basis. On January 8, 1981, the FERC issued its order under Docket No. EF 79-4021 confirming and approving the existing annual rate of \$1,388,300 as submitted by the Assistant Secretary.

Sam Rayburn Dam Electric Cooperative, Inc., refused to pay the existing rate of \$1,388,300 while it was in effect on an interim basis (June 1, 1979, through January 7, 1981). SWPA filed suit at the district court level to obtain payment, but the court handed down a decision in August 1982 in favor of the customer. Subsequently, the Fifth Circuit Court of Appeals reversed two other lower court decisions involving the same legal issues. Based upon this ruling the District Court vacated its previous Order in the Sam Rayburn case and entered a judgment in favor of the United States. The FERC staff has advised SWPA that for purposes of the repayment studies, we should treat court orders as final consistent with previous Commission rulings. Therefore, the repayment studies include no adjustments to revenue since the Government's position is currently upheld by court order.

Discussion**Estimates of Future Expenses**

The need for additional revenue results mainly from increased operation and maintenance (O&M) expense related to hydroelectric power facilities operated by the Corps of Engineers and SWPA's general administrative and overhead expense. O&M expense projections provided by the Corps for the 1978 Repayment Study were estimated at \$411,300 per year for FY 1982 and subsequent years. In the 1982 Repayment Study, Corps O&M expense is escalated 10 percent per year from a FY 1981 base year cost of \$395,900 to \$637,600 in FY 1986 and subsequent years. The 1978 Repayment Study estimated FY 1978 O&M to be \$280,900 which proved to be very close to the actual figure for FY 1978 of \$293,145. A comparison of O&M expense using FY

1978, which is the first projected year of the Repayment Study, and FY 1986, which represents the maximum escalated O&M expense figure in the 1982 Repayment Study, indicates that O&M expense is projected to increase \$356,700 or 127 percent.

The 1982 Repayment Study follows the same procedure as the 1978 Repayment Study to determine the portion of general administrative and overhead (GA&O) costs assigned to the Sam Rayburn Dam project. The ratio of power investment in the Sam Rayburn Dam project to the total SWPA system power and transmission investments in service is applied to the estimated GA&O expense for the total system. The total system GA&O expense is projected from estimated Congressional Budget appropriations using Gross National Product deflators through FY 1986. The FY 1986 amount is used for each subsequent year. A five-year average (FY 1977-FY 1981) of actual total system Transmission O&M and GA&O expense indicates that GA&O expense comprises 45.4 percent and Transmission O&M expense 54.6 percent of the total GA&O and O&M expense. Transmission O&M is not chargeable to the Sam Rayburn Dam project.

The 1978 Repayment Study estimated GA&O expense for the Sam Rayburn Dam project to be \$57,800 in FY 1978 and increase to \$60,200 for 1982 and later years. The 1982 Repayment Study escalates GA&O expense from \$115,600 in FY 1982 to \$121,200 for FY 1986 forward. The increase from FY 1978 through FY 1986 amounts to \$63,400 or 109.7 percent.

Estimates of future project replacements were provided by the Corps of Engineers July 15, 1977, based on 1977 cost data. The 1977 cost estimates have been escalated to 1981 cost levels by SWPA using "The Handy-Whitman Index of Public Utility Construction Costs" for July 1981. The 1978 Repayment Study estimated project replacements totaling \$1,063,800 for the period FY 1982 through FY 2016. The 1982 Repayment Study estimates project replacements totaling \$1,897,300 for the same period of time. The estimated increase in cost related to major project replacements is \$833,500 or 78.4 percent for FY 1982 through FY 2016.

As a result of increased expenses, the 1982 Power Repayment Studies for Sam Rayburn Dam show the need for an annual increase in revenue of \$316,204 to repay all costs including amortization of the power investment at a 50-year rate and satisfy requirements of Section 5 of the Flood Control Act of 1944 and Department of Energy Order No. RA 6120.2.

Submission to the FERC; Effective Date

As explained by the Administrator, because of the pendency of unresolved litigation in the Claims Court, he proposed that the rate involved in this proceeding not be placed into effect on an interim basis, but that it be placed into effect upon confirmation and approval by the FERC on a final basis. The power repayment study is based upon the assumption that the rate will be in effect beginning June 1, 1983.

Accordingly, I am not placing the rate into effect on an interim basis at this time but am approving it for submission to the FERC for confirmation, approval and effectuation on a final basis, subject to further review of the matter if action by the FERC is unduly delayed.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby approve an increase in the present annual rate of \$1,388,300 for the sale of power and energy from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14-02-0001-1124, as amended November 1, 1980, to a rate of \$1,704,504 per year, or \$142,042 per month for submission to the Federal Energy Regulatory Commission for confirmation, approval and placement in effect on a final basis.

Issued at Washington, D.C., this 28th day of April 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Proposed Rate Schedule 14-02-0001-1124¹

**United States Department of Energy,
Southwestern Power Administration**

Wholesale Rate for Power and Energy Sold to Sam Rayburn Dam Electric Cooperative, Inc.

(Contract 14-02-0001-1124)¹

Effective: As of June 1, 1983, and thereafter in accordance with the order of the Federal Energy Regulatory Commission, dated _____, 1983, Docket No. EF 83-4021.

Applicable: To the power and energy purchased by Sam Rayburn Dam Electric Cooperative, Inc. (Sam Dam Co-op) from the Southwestern Power Administration (Government) under the Agreement for the Sale of the entire output of Sam Rayburn Dam at the damsite dated February 13, 1964, designated as Contract 14-02-0001-1124.

Compensation for Sam Rayburn Dam Power and Energy:

Article II, of said Contract 14-02-0001-1124.

¹ Marked "Rate Schedule 14-02-0001-1124" for reference purposes only; not so designated in proceedings before the Federal Energy Regulatory Commission.

"Section 3. Compensation to SPA for Sam Rayburn Dam Power and Energy.

(a) The Sam Dam Co-op shall compensate SPA each month for the 'Hydro Power and Energy' purchased under this Article II in accordance with the schedule of compensation set forth below:

(i) Beginning on the first day of the month following the date the first generating unit at the Sam Rayburn Dam is ready for commercial operation, and until the amount of compensation provided under part (ii), below, becomes due and payable—\$40,000 per month;

(ii) Beginning on the first day of the month following the date two generating units at the Sam Rayburn Dam are ready for commercial operation, and thereafter during the term of this contract—\$79,167 per month;

(iii) Effective March 5, 1971, by F.P.C. Order—\$85,833.34 per month, \$1,030,000.00 per year;

(iv) Effective June 1, 1979, by F.E.R.C. Order—\$115,691.67 per month, \$1,388,300.00 per year;

(v) Effective June 1, 1983, by F.E.R.C. Order—\$142,042.00 per month, \$1,704,504.00 per year.

(b) If, for a period of forty-eight hours or longer SPA by reason of an 'Uncontrollable Force' is unable to deliver 'Hydro Power and Energy' as scheduled, SPA shall deliver to the Sam Dam Co-op from other sources of power supply available to SPA an amount of power and energy equivalent to that scheduled but not received by the Sam Dam Co-op during the period of such inability. The point of delivery for such equivalent amounts of power and energy shall be at such point or points of interconnection between the 'System of SPA' and the 'System of Sam Dam Co-op' as may be mutually agreed upon at the time of each such period of inability; *Provided*, that it is recognized that the amount of water available for generation of 'Hydro Power and Energy' at any particular time is and will be dependent upon the manner in which the generation and delivery of power and energy has been previously scheduled by the Sam Dam Co-op, and it is understood and agreed that if any such period of inability of SPA to deliver power and energy as scheduled by the Sam Dam Co-op is caused by a failure of water supply at the Sam Rayburn Dam which is the result of improvident scheduling by the Sam Dam Co-op then, and in that event, the Sam Dam Co-op shall not be entitled to receive any equivalent amounts of power and energy as hereinbefore provided."

[FR Doc. 83-12137 Filed 5-5-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59124; BH-FRL 2355-4]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the *Federal Register* of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by May 23, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59124]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-47

Close of Review Period. June 2, 1983.

Manufacturer. Confidential.

Chemical. (G) Modified poly (amino-amine).

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Confidential.

Environmental Release/Disposal.

Less than 10 kg/yr released to air and land.

TME 83-48

Close of Review Period. June 2, 1983.

Manufacturer. Confidential.

Chemical. (G) Diamino heteropolycyclic compound.

Use/Production. (G) Water colorant used as a minor component in industrial, commercial and consumer applications. Prod. range: 120 days—500 kg.

Toxicity Data. Acute oral LD₅₀: 5,000 mg/kg; Acute dermal LD₅₀: >2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant; Ames Test: Negative; Acute Toxicity (96 hr. LC₅₀, Bluegill)—71 mg/l.

Exposure. Minimal exposure during manufacturing and processing.

Environmental Release/Disposal. Disposal by on-site treatment prior to discharge to a publicly owned treatment works (POTW).

TME 83-49

Close of Review Period. June 2, 1983.

Manufacturer. Confidential.

Chemical. (G) Spiro [isobenzofuran xanthene].

Use/Production. (G) Minor color-forming component in paper coatings. Prod. range: 210 days—1,400 kg.

Toxicity Data. Acute oral LD₅₀: >5,000 mg/kg; Acute dermal LD₅₀: >2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Minimal exposure during manufacturing and processing.

Environmental Release/Disposal. Disposal by on-site treatment prior to discharge to a POTW.

TME 83-50

Manufacturer. Confidential.

Chemical. (G) Dialkylphenyl substituted amine.

Use/Production. (G) Captive intermediate used in manufacture of a minor component for paper coatings. Prod. range: 1,900 kg.

Toxicity Data. Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Minimal exposure during manufacture and processing.

Environmental Release/Disposal. Disposal by on-site treatment prior to discharge to a POTW.

Dated: April 25, 1983.

Ronald A. Standley,
Acting Director, Management Support Division.

[FR Doc. 83-11621 Filed 5-5-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51464; TSH-FRL 2355-5]**Certain Chemicals; Premanufacture Notices**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the *Federal Register* of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of nineteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83-642, 83-643, 83-644, 83-645, 83-646, 83-647, 83-648 and 83-649; July 13, 1983.

PMN 83-650 and 83-651; July 16, 1983.

PMN 83-652, 83-653, 83-654 and 83-655; July 17, 1983.

PMN 83-656; July 18, 1983.

PMN 83-657, 83-658, 83-659, and 83-660; July 19, 1983.

Written comments by:

PMN 83-642, 83-643, 83-644, 83-645, 83-646, 83-647, 83-648 and 83-649; June 13, 1983.

PMN 83-650 and 83-651; June 16, 1983.

PMN 83-652, 83-653, 83-654 and 83-655; June 17, 1983.

PMN 83-656; June 18, 1983.

PMN 83-657, 83-658, 83-659 and 83-660; June 19, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-51464]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-642

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenol.

Use/Production. (G) Low-volume site-limited intermediate. Prod. range: 1-20 kg/yr.

Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal and inhalation, minimal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-643

Manufacturer. Confidential.
Dated: Chemical. (G) Disubstituted benzoxazole.
Use/Production. (G) Low-volume site-limited intermediate. Prod. range: 1-20 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal and inhalation, minimal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-44

Manufacturer. Confidential.
Chemical. (G) Trisubstituted benzoxazolium salt.
Use/Production. (G) Incorporated as a minor constituent in an article for commercial and consumer use. Prod. range: 2-40 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and inhalation, minimal.
Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 83-645

Manufacturer. Confidential.
Chemical. (G) Alkyd polymer from a vegetable oil with substituted alkanediols and carbomonomocyclic acids.
Use/Production. (G) Destructive and dispersive use. Prod. range: 23,500-70,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and ocular, a total of 130 workers, up to 6 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-1,000 kg/yr to land. Disposal by approved landfill.

PMN 83-646

Manufacturer. Confidential.
Chemical. (G) Modified alkyd resin.
Use/Production. (G) Dispersive use. Prod. range: 12,500-37,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and ocular, a total of 43 workers, up to 6 hrs/da, up to 48 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-1,000 kg/yr to land. Disposal by approved landfill.

PMN 83-647

Manufacturer. Confidential.

Chemical. (G) Polymer of formaldehyde and substituted phenols.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83-648

Manufacturer. Confidential.
Chemical. (G) Polymer of formaldehyde and substituted phenols.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83-649

Manufacturer. Confidential.
Chemical. (G) Polymer of formaldehyde and substituted phenols.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83-650

Manufacturer. Confidential.
Chemical. (G) Polymer of a diisocyanate, polyether, alkanol substituted cycloalkane, dipropylene glycol.
Use/Production. (G) Site-limited and use. Prod. range: 500-12,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and ocular, a total of 6 workers, up to 8 hrs/da, up to 6 da/yr.
Environmental Release/Disposal. 10-100 kg/yr released to land. Disposal by approved landfill.

PMN 83-651

Manufacturer. Confidential.
Chemical. (G) Polymer of a diisocyanate polyether glycol, alkanol substituted cycloalkane, dipropylene glycol, alkanol diamine, substituted bisphenol A polymer.
Use/Production. (G) Coatings. Prod. range: 575-14,400 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and ocular, a total of 3 workers, up to 8 hrs/da, up to 6 da/yr.
Environmental Release/Disposal. 10-100 kg/yr released to land. Disposal by approved landfill.

PMN 83-652

Manufacturer. Confidential.
Chemical. (G) Modified poly (amido-amine).
Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 6 hrs/da.
Environmental Release/Disposal. Less than 10 kg-yr released to air, water and land.

PMN 83-653

Manufacturer. Confidential.
Chemical. (G) Disubstituted isobenzofurandione, disubstituted bis phenyleneoxy bis copolymer with tetracarboxy carbocycle and disubstituted benzenediamine.
Use/Production. (G) Thermoplastic resin for molded articles. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and disposal: dermal.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW), biological treatment system and approved landfill.

PMN 83-654

Manufacturer. Confidential.
Chemical. (S) Lauryl sulfate salt with 2-amino-2-methyl-1-propanol.
Use/Production. (S) Surfactant for use in consumer cleaning products. Prod. range: 5,000-75,000 kg/yr.
Toxicity Data. Acute oral: 1,300 mg/kg; Irritation: Skin—Irritant, Eye—Irritant.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 83-655

Manufacturer. Confidential.
Chemical. (G) Naphthalenesulfonic acid, derivative, ester with hydroxybenzo-phenone.
Use/Production. Confidential. Prod. range: 500-1,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 2 workers, up to 51 manhours/yr.
Environmental Release/Disposal. No release.

PMN 83-656

Manufacturer. Confidential.
Chemical. (G) Substituted alkyl carboxylic acid, carbomonomocyclic ester.
Use/Production. (S) Captive intermediate. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. Disposal by biological treatment system and incineration.

PMN 83-657

Manufacturer. Confidential.

Chemical. (G) Pentasubstituted benzimidazolium salt.

Use/Production. (G) Incorporated as a minor constituent in an article for commercial and consumer use. Prod. range: 2-50 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, minimal.

Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 83-658

Manufacturer. Confidential.

Chemical. (G) Trisubstituted benzenamine.

Use/Production. (G) Low volume site-limited intermediate. Prod. range: 2-40 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, minimal.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-659

Manufacturer. Confidential.

Chemical. (G) Tetrasubstituted benzene.

Use/Production. (G) Low-volume site-limited intermediate. Prod. range: 2-40 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, minimal.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-660

Importer. Manchem, Incorporated.

Chemical. (G) Perfluorinated hydrocarbon.

Use/Import. (S) Vapour phase soldering. Import range: 0-20,000 kg/yr.

Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Eye—Nonirritant; Ames Test: Negative.

Exposure. Use: dermal and inhalation.

Environmental Release/Disposal. 1,000-10,000 kg/yr released to air.

Dated: April 25, 1983.

Ronald A. Stanley,

Acting Director, Management Support Division.

[FR Doc. 83-11622 Filed 5-5-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-55002 PH-FRL 2359-8]

Florida; Intent To Approve State Plan for Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(f) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (Pub. L. 95-398, 92 Stat. 819; 7 U.S.C. 136 et seq.) and the implementing regulations of 40 CFR Part 172, Subpart B, require each State desiring to issue experimental use permits to submit a plan to EPA for its experimental use permit program. Any State experimental use program authorized under this section shall be maintained in accordance with the State plan approved under this section. This is a notice of intent to approve such a plan for Florida.

DATE: Comments should be received on or before June 6, 1983.

ADDRESS: Written comments should be submitted to: Program Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments should bear the identifying notation OPP 55002. The administrative record supporting this action is available for public inspection at the address noted above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. Complete copies of the Florida State Plan are available for public inspection at:

1. Florida Department of Agriculture, 213 Mayo Building, Tallahassee, Florida 32301.

2. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT:

Kent Williams, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365 (404-881-3222).

SUPPLEMENTARY INFORMATION: Section 5(f) of FIFRA, as amended, and the implementing regulations at 40 CFR Part 172, Subpart B, require each State desiring to issue experimental use permits to submit a plan for its experimental use permit program to EPA for approval. Any State experimental use permit program shall be maintained in accordance with the State Plan approved under this section.

On January 4, 1982, EPA received such a plan from the State of Florida. EPA withheld action on the plan, pending State administrative amendments to pesticide regulations. On March 8, 1983, EPA learned that these amendments had been incorporated into Florida Rule 5E-2.09 Experimental Use Permits. EPA finds that the Florida State Plan satisfies the requirements of section 5(f) of the amended FIFRA and 40 CFR Part 172, Subpart B, and EPA intends to approve

the Florida State Plan. Complete copies of the Florida State Plan are available for public inspection, and public comment is solicited.

The Office of Management and Budget has granted EPA an exemption from OMB review (under the authority of Executive Order 12291) of notice of intent to approve State plans for issuing State experimental use permits.

Dated: March 29, 1983.

Charles R. Jeter,

Regional Administrator, Region IV.

[FR Doc. 83-12176 Filed 5-5-83; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2360-4]

Availability of Environmental Impact Statements Filed April 25 Through April 29, 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. 830227, Draft, COE, MS, Hattiesburg-Petal Flood Control, Bowie and Leaf Rivers, Forrest County, Due: June 24, 1983

EIS No. 830224, Final, COE, KS, Main Branch Chisholm Creek Local Flood Protection, Sedgwick County, Due: June 6, 1983

EIS No. 830222, F Suppl, COE, NY, Wallkill River Snagging and Clearing, Black Dirt Area, Orange County, Due: June 6, 1983

Department of the Interior:

EIS No. 830225, Draft, BLM, OR, Southern Malheur Livestock Grazing Management Program, Malheur County, Due: June 30, 1983

EIS No. 830228, Draft, BLM, CA, Redding Resource Area Domestic Livestock Grazing Management Program, Due: June 27, 1983

EIS No. 830229, Draft, BLM, ID, Big Lost-Mackay Area, Livestock Grazing Mgmt. Plan, Butte/Custer Counties, Due: July 9, 1983

EIS No. 830230, Draft, IBR, AZ, Central Arizona Project, Regulatory Storage Division, Const./Oper, Due: July 28, 1983

Department of Transportation:

EIS No. 830228, Draft, FHWA, GA, Presidential Parkway Construction, I-75 to Blvd. Fulton and Dekalb Counties, Due: June 24, 1983

Federal Energy Regulatory Commission:

EIS No. 830223, Final, FRC, ID, Gem State Hydroelectric Project #2952 License, Bingham/Bonneville Counties, Due: June 6, 1983

EIS No. 830231, Final, FRC, WA, Cowlitz Falls Hydroelectric Project #2833 License, C/O, Lewis County, Due: June 6, 1983

Amended Notices:

EIS No. 830146, Draft, OSM, MT, PRO, Rosebud Coal Mining Operations, Comprehensive Plan, Rosebud Co.

Published FR 04/29/83—Incorrect accession number

Dated: May 3, 1983.

Pasquale A. Alberico,
Acting Director, Office of Federal Activities.

(FR Doc. 83-12171 Filed 5-5-83; 8:45 am)

BILLING CODE 6560-50-M

[OPTS-51465 TSH-FRL 2359-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the *Federal Register* of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of seventeen PMNs and provides a summary of each.

DATES:

Close of Review Period: PMN 83-661, 83-662 and 83-663 July 20, 1983; PMN 83-664, July 23, 1983; PMN 83-665, 83-666, 83-667, 83-668, 83-669, and 83-670, July 24, 1983; PMN 83-671, 83-672, 83-675, July 25, 1983; PMN 83-676, 83-677, 83-678 and 83-679, July 26, 1983.

Written comments by: PMN 83-661, 83-662, and 83-663, June 20, 1983; PMN 83-664, June 23, 1983; PMN 83-665, 83-666, 83-667, 83-668, 83-669, and 83-670, June 24, 1983; PMN 83-671, 83-672, 83-675, June 25, 1983; PMN 83-676, 83-677, 83-678, and 83-679, June 26, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-51465]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St. SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St. SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential

version of the submission provided by the manufacturer of the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-661

Manufacturer. Confidential.

Chemical. (G) Polyimide ester.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Minimal.

Environmental Release/Disposal. Release is negligible. Disposal by Resource Conservation Recovery Act regulations.

PMN 83-662

Manufacturer. Confidential.

Chemical. (G) Melamine formaldehyde resin.

Use/Production. (G) Open use. Prod. range: 0-2,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, inhalation, and ocular, a total of 139 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10 to more than 10,000 kg/yr to land. Disposal by incineration and landfill.

PMN 83-663

Importer. Confidential.

Chemical. (G) Alkyl-substituted aromatic amine.

Use/Import. (S) Industrial chain extender for polyurethanes.

Import range: Confidential.

Toxicity Data. Acute oral: 1,490 mg/kg; Acute dermal: > 2,500 mg/kg;

Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Negative.

Exposure. Manufacture and processing: dermal, a total of 17 workers, up to 8 hrs/da, up to 180 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air with 10-100 kg/yr to water. Disposal by publicly owned treatment works (POTW).

PMN 83-664

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted benzoic acid.

Use/Production. (G) Captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: > 500 mg/kg; Acute dermal: > 2,000 mg/kg;

Irritation: Skin—Slight, Eye—Positive; Ames Test: Negative; Ingestion—Slight.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-665

Manufacturer. Confidential.

Chemical. (G) Mixed polyalkoxy alkyl siloxanes and silsesquioxanes.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, inhalation, and ocular, a total of 18 workers, up to 6 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-666

Manufacturer. Confidential.

Chemical. (G) Aromatic alkyl.

Use/Production. (S) Resin for low volatile organic content coatings. Prod. range: 5,000-100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, inhalation and ocular, a total of 53 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10-100 kg/yr released to air and water with 100 to more than 10,000 kg/yr to land.

Disposal by POTW and approved landfill.

PMN 83-667

Manufacturer. Confidential.

Chemical. (G) Pentasubstituted benzimidazolium salt.

Use/Production. (G) Low-volume site-limited intermediate. Prod. range: 3-60 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, minimal.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-668

Manufacturer. Confidential.

Chemical. (G) Tetrasubstituted benzenamine.

Use/Production. (G) Low-volume site-limited intermediate. Prod. range: 2-40 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, minimal.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-669

Importer. Confidential.

Chemical. (G) Chromium complex of substitutedphenolazosulfonaphthol with naphtholazosulfonaphthol.

Use/Import. (S) Industrial textile dye. Import range: Confidential.

Toxicity Data. Acute oral: 4.7 g/kg; Irritation: Skin—Slight, Eye—Moderate.

Exposure. Processing: dermal and inhalation, a total of 12 workers, up to 2 hrs/da, up to 80 da/yr.

Environmental Release/Disposal. Less than 80 kg/yr released to water. Disposal by POTW and incineration.

PMN 83-670

Manufacturer. Confidential.

Chemical. (S) Polymer of: neopentyl glycol, trimellitic anhydride, phthalic anhydride, trimethyl pentanediol.

Use/Production. (G) Open use. Prod. range: 3,500-75,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture, processing, and disposal: dermal and inhalation, a total of 16 workers, up to 8 hrs/da, up to 45 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air. Disposal by approved landfill.

PMN 83-671

Manufacturer. Confidential.

Chemical. (G) Tetrasubstituted benzothiazole salt.

Use/Production. (G) Incorporated as a minor constituent in an article for commercial and consumer use. Prod. range: 5-10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, minimal.

Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 83-672

Manufacturer. Confidential.

Chemical. (G) Trisubstituted benzothiazole salt.

Use/Production. (G) Low-volume site-limited intermediate. Prod. range: 5-10 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, use and disposal: dermal and inhalation, minimal.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-675

Manufacturer. Confidential.

Chemical. (G) Vinyl acetate, butyl acrylate, substituted methacrylate, terpolymer.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 9 workers, up to 24 hrs/da, up to 350 da/yr.

Environmental Release/Disposal. 10-1,000 kg/yr released to water. Disposal by POTW.

PMN 83-676

Manufacturer. Confidential.

Chemical. (S) 1-Naphthalenesulfonic acid, 6-amino-5-hydroxy-

Use/Production. (S) Industrial site-limited chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, use and disposal: dermal, a total of 66 workers, up to 12 hrs/da, up to 180 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and land with 100-1,000 kg/yr to water. Disposal by wastewater treatment plant.

PMN 83-677

Importer. Confidential.

Chemical. (G) Chromium complex of substituted alkylaminoformimidphenol with sulfonaphtholazosulfonylpyrazolone.

Use/Import. (S) Industrial textile dye. Import range: 400-2,500 kg/yr.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 12 workers, up to 3 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. Less than 25 kg/yr released to water. Disposal by POTW and incineration.

PMN 83-678

Importer. Confidential.

Chemical. (G) Dibutyltin mercaptoacetate derivative.

Use/Import. (G) Contained use. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal and inhalation, minimal.

Environmental Release/Disposal. No release.

PMN 83-679

Importer. Confidential.

Chemical. (G) Alkyl ester of an epoxy acid.

Use/Import. (G) Contained use. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal and inhalation, minimal.

Environmental Release/Disposal. No release.

Dated: April 29, 1983.

Ronald A. Stanley,

Acting Director, Management Support Division.

[FR Doc. 83-12044 Filed 5-5-83; 8:45 am]

BILLING CODE 8550-50-M

[A-6-FRL 2359-2]

Air Pollution Control Grants; Continuing Eligibility Level for FY81, State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and opportunity for public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Region 6 announces an opportunity for public hearing and comment on a tentative determination that the State of Arkansas' budget reduction in FY81 contributed to the Arkansas Department of Pollution Control and Ecology's (ADPC&E) inability to meet the continuing eligibility level (CEL) requirement of Section 105(b) of the Clean Air Act (CAA) in FY81.

HEARING OPPORTUNITY: If written requests for a public hearing are received by June 6, 1983. The Agency will hold a hearing at Little Rock, Arkansas.

FOR FURTHER INFORMATION CONTACT: Dolores S. Johnson, Chief, State Programs Section, Air & Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, Telephone: (214) 767-9858, FTS 729-9858.

SUPPLEMENTARY INFORMATION: Section 105(b) of the Clean Air Act (CAA) specifies that no Agency shall receive any grant under this section during any fiscal year when its expenditures of non-federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of government.

Although the ADPC&E had initially certified that its state expenditures for air pollution control programs in Arkansas had met CEL requirements, further review of Fiscal Year 1981 (FY81) financial data disclosed that FY81 expenditures were \$48,196.00 below the FY80 level of expenditure. ADPC&E has provided a letter dated October 22, 1982, from the Director, Department of Finance and Administration, State of Arkansas, explaining that actual distributions of FY81 funds were only 89.2% of appropriations and that reductions were "applied equally to all agencies" as required by law. ADPC&E

has informed EPA that this reduction caused the FY81 expenditures for air programs to be \$42,564 less than the FY80 level, resulting in the State not meeting the CEL requirement. EPA proposes that ADPC&E pay back the remainder (\$5,632) which resulted from federal grant overpayments.

This is not an evaluation of present programs. EPA has noted that (1) this issue concerns only a budgeting error in a previous year, FY81, (2) all substantive grant commitments were met in FY81 despite reduced funding and ADPC&E organizational changes, (3) if FY82 and FY83 to date the ADPC&E has demonstrated a commitment to support the air pollution control program, exceeding the FY80 level of State funding.

This notice provides an opportunity for a public hearing, as required by the Clean Air Act. EPA will hold the hearing only if actual requests for a public hearing are received. Unless written requests for a hearing on this FY81 CEL issue are received by EPA, Region 6 (Dallas) by June 6, 1983 we will proceed to resolve this matter as proposed. EPA will also consider any written comments received.

Dated: April 20, 1983.

Frances E. Phillips,
Acting Regional Administrator.

[FR Doc. 83-12175 Filed 5-5-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-678-DR]

Mississippi; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Mississippi (FEMA-678-DR), dated April 16, 1983, and related determinations.

DATED: May 2, 1983.

FOR FURTHER INFORMATION CONTACT:
Sewall H. E. Johnson, Disaster
Assistance Programs, Federal
Emergency Management Agency,
Washington, D.C. 20472 (202) 287-0501.

Notice: The notice of a major disaster for the State of Mississippi dated April 16, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 16, 1983.

Pearl River, Simpson, and Copiah Counties
for Individual Assistance and Public
Assistance
Covington County for Individual Assistance
Claiborne and Pike Counties as adjacent
counties for Individual Assistance

(Catalog of Federal Domestic Assistance No.
83.516, Disaster Assistance)

Joe D. Winkle,

Acting Deputy Associate Director, State and
Local Programs and Support, Federal
Emergency Management Agency.

[FR Doc. 83-12142 Filed 5-5-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-680-DR]

Utah; Major Disaster and Related Determinations

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA-680-DR), dated April 30, 1983, and related determinations.

DATED: April 30, 1983.

FOR FURTHER INFORMATION CONTACT:
Sewall H.E. Johnson, Disaster
Assistance Programs, Federal
Emergency Management Agency,
Washington, D.C. 20472 (202) 287-0501.

Notice: Notice is hereby given that, in a letter of April 30, 1983, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Utah, resulting from severe storms, landslides and flooding, beginning on or about April 12, 1983, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to Section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. David P. Grier, IV., of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster:

Utah County for Individual Assistance and Public Assistance
Carbon and Emery Counties for Individual Assistance only

(Catalog of Federal Domestic Assistance No.
83.516, Disaster Assistance.)

[FR Doc. 83-12144 Filed 5-5-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-681-DR]

Virgin Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Virgin Islands of the United States (FEMA-681-DR), dated April 30, 1983, and related determinations.

DATED: April 30, 1983.

FOR FURTHER INFORMATION CONTACT:
Sewall H. E. Johnson, Disaster
Assistance Programs, Federal
Emergency Management Agency,
Washington, D.C. 20472 (202) 287-0501.

Notice: Notice is hereby given that, in a letter of April 30, 1983, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the Virgin Islands of the United States of America, resulting from severe storms, landslides and flooding, beginning on or about April 17, 1983, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the Virgin Islands of the United States of America.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75

percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Frank P. Petrone of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Virgin Islands of the United States of America to have been affected adversely by this declared major disaster:

The Islands of St. John and St. Thomas for Individual Assistance and Public Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Deputy Associate Director State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-12143 Filed 5-5-83; 8:45 am]

BILLING CODE 6716-02-M

Seastar Shipping Co., Ltd.—FMC-1
Timber Line Ltd.—FMC-1 & 2
Turk & Caicos Traders Ltd.—FMC-1
Victoria Line—FMC-2

Now, therefore it is ordered, That the common carriers listed above advise the Director, Bureau of Tariffs at 1100 "L" Street, NW., Washington, D.C. 20573, in writing within 30 days of the date this Notice is published in the Federal Register of any reason why the tariff listed above should not be cancelled as inactive;

It is further ordered, that a copy of this Notice be sent by certified mail to the last known address of the common carriers listed above:

It is further ordered, That the subject tariffs of all carriers named above not responding to this Notice will be cancelled;

It is further ordered, That this Notice be published in the Federal Register and a copy thereof be filed with any tariff cancelled pursuant to this Notice.

By the Commission, pursuant to authority delegated by section 9.04 of Commission Order No. 1 (Revised), effective November 12, 1981.

Robert G. Drew,
Director, Bureau of Tariffs.

[FR Doc. 83-12196 Filed 5-5-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BankAmerica Corp.; Acquisition of Bank Holding Company

BankAmerica Corporation, San Francisco, California, has applied for the Board's approval under section 3(a) of the Bank Holding Company Act (12 U.S.C. 1842(a)) to acquire 100 percent of the voting shares of the successor by merger to Seafirst Corporation, Seattle, Washington, and thereby indirectly acquire 100 percent of the voting shares of Seattle-First National Bank, Seattle, Washington, and Western National Bank, Bothell, Washington. The factors that are considered in acting on this application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

BankAmerica Corporation, San Francisco, California, has also applied, pursuant to sections 4(c)(8) and 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and (13)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire shares of numerous direct and indirect subsidiaries of Seafirst Corporation presently engaged in various activities, including originating, acquiring, and servicing loans and other extensions of credit; operating industrial banks; operating a licensed small business investment company; providing

data processing services; leasing activities; acting as underwriter or reinsurer for credit life insurance and credit accident and health insurance and as agent or broker for life and disability insurance and property damage insurance, all directly related to an extension of credit or the provision of financial services; selling money orders and U.S. savings bonds, and selling and issuing traveler's checks; operating an Edge Act corporation; operating a foreign bank subsidiary; and providing services to the bank or bank holding company or holding, on behalf of the bank or bank holding company, certain assets acquired in satisfaction of debts previously contracted. In addition to the factors considered under section 3 of the Act, the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843) and § 225.4(a) of the Board's Regulation Y (12 U.S.C. 225.4(a)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 31, 1983. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by the proposal.

Board of Governors of the Federal Reserve System, May 4, 1983.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 83-12353 Filed 5-5-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Inactive Tariffs—Bureau of Tariffs; Intent to Cancel

The foreign commerce files of the Federal Maritime Commission contain numerous tariffs which have been classified as inactive due to the absence of any tariff changes for a period of one year or longer, or the Commission staff's inability to contact the tariff filers at the addresses shown on the tariffs. Inactive tariffs reflect inaccurate information to the shipping public and serve no useful purpose in the Commission's files. Accordingly, the commission proposes to cancel the inactive tariffs listed below unless the common carriers shall have advised the Commission within 30 days of the date of this Notice as to why their inactive tariffs should not be cancelled:

Bankoku Kisen Kaisha, Ltd.—FMC-3
Caribbean Supply Co.—FMC-1
Colcarga Empresa Naviera, S.A.—FMC-1
Comarvenca De Navegacion, C. por A. d.b.a.
Donaca Line—FMC-1
Gulf Link Services Inc.—FMC-2
Kien Hung Shipping Co., Ltd.—FMC-1
Marcella Shipping Co.—FMC-3
Natimar Compania Naviera S.A. Panama d.b.a. Natimar Line S.A.—FMC-1
Pura Trading Inc.—FMC-1
Sanmar Line S.A. Colombia d.b.a.
Sanmarine—FMC-1

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83N-0082]

Codex Standard for Dried Apricots

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing the Codex Standard for Dried Apricots (Codex standard) developed by the Codex Alimentarius Commission and

announcing that no U.S. standard will be established for dried apricots based on the Codex standard.

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. As a member of the Codex Alimentarius Commission, the United States is obligated 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 which 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.

The United States can 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 by establishing a standard under the authority of section 401 of the act (21 U.S.C. 341), or by revising an existing standard appropriately to incorporate the Codex provisions within the U.S. standard. However, section 401 of the act states that no definition and standard of identity and no standard of quality shall be established for dried fruits. Therefore, FDA lacks authority to establish U.S. standards for dried apricots. There are only voluntary grade standards for marketing dried apricots, including identity and quality requirements, developed by the U.S. Department of Agriculture.

Although no U.S. standard for dried apricots may be established, FDA is publishing the Codex standard (Codex standard 130-1981), as set forth below,

in accordance with the agency's usual practice in those cases subject to 21 CFR 130.6. Because FDA cannot establish a standard for dried apricots, no comments are solicited in response to this notice. FDA will inform the Codex Alimentarius Commission that an imported food which 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.

The Codex standard for dried apricots is as follows:

Codex Stan 130-1981—Codex Standard for Dried Apricots (Worldwide Standard)

1. Scope.

This standard applies to dried fruits of *Armeniaca vulgaris* Lam. (*Prunus armeniaca* L.) which have been suitably treated or processed and which are offered for direct consumption. It also covers dried apricots which are packed in bulk containers and which are intended for repacking into consumer size containers or for direct sale to consumers.

2. Description.

2.1 Product Definition.

Dried apricots is the product: (a) prepared from sound ripe fruit of varieties of *Armeniaca vulgaris* Lam. (*Prunus armeniaca* L.); and (b) processed by drying either by the sun or by other recognized methods of dehydration, which may be preceded by sulphuring, into a form of marketable dried product.

2.2 Varietal Types.

Any suitable variety (cultivar) of apricots may be used.

2.3 Styles.

The product shall be presented in one of the following styles:

- (a) Whole, unpitted;
- (b) Whole, pitted;
- (c) Whole, pitted and stuffed with edible materials;
- (d) Halves;
- (e) Slabs—consisting of portions of sound, ripe apricots of characteristic colour, irregular in shape, size and thickness and excluding whole fruit;
- (f) Kamaradin—consisting of dried apricot pulp or paste prepared as a sheet or flakes.

2.4 Size Classification (Optional).

Dried apricots may be designated as to size in accordance with the following table:

Designation	Number of unpitted wholes per kg	Number of pitted wholes per kg	Number of halves per kg
Very small	Over 205	241-500	481-600
Small	150-205	166-240	331-480
Medium	115-149	131-165	261-330
Large	95-114	100-130	200-260
Extra large	Less than 95	Less than 100	Less than 200

3. Essential Composition and Quality Factors.

3.1 Basic Ingredients.

Clean, sound apricots of a quality suitable for human consumption.

3.2 Optional Ingredients.

Other edible material as may be appropriate to stuffing the product, including nutritive carbohydrate sweeteners as approved by the Codex Alimentarius Commission [see §§ 2.3(c) and 7.1.2(c)].

3.3 Quality Criteria.

3.3.1 Moisture Content.

(a) *Unsulphured* dried apricots not treated with sorbic acid—not more than 20% m/m.

(b) *Sulphured* and/or sorbic acid treated dried apricots—not more than 25% m/m.

3.3.2 Quality Factors—General Requirements.

(a) Colour characteristic of the variety and the type of treatment;

(b) Flavour and odour characteristic of the product;

(c) Free from damaged, broken, mouldy and immature fruit for styles 2.3 (a) to (d) as described in sub-section 3.3.3 and subject to tolerances provided for in sub-section 3.4.4;

(d) Generally uniform in size within any count category, where declared;

(e) Free from living insects or mites;

(f) Mineral impurities—may not be present to the extent that the eating quality or usability is materially affected;

(g) Foreign matter—Practically free from extraneous vegetable matter, insect debris and other objectionable matter.

3.3.3 Definition of Defects.

(a) *Damaged fruit*—fruit affected by any damage or blemish on the surface resulting from factors such as hail, etc., affecting more than 5 mm² of fruit surface.

(b) *Broken fruit*—fruit affected by any damage resulting from improper halving or other mechanical action.

(c) *Immature fruit*—fruit which is generally deficient in sugar and may be sour in taste.

(d) *Insect damaged fruit*—fruit which is affected by insect damage or containing dead insects, mites, or other pests.

(e) *Mouldy fruit*—fruit which is affected by mould to a visible extent, or decay.

(f) *Dirty fruit*—fruit affected by imbedded dirt or any other foreign material.

3.3.4 Allowances for Defects.

The sample unit size shall be 1 kg.

The following allowances for defects shall apply to all the styles with the exception of the "Slab" and "Kamaradin" styles:

Defect	Maximum allowed (percent m/m)
Slabs	10
Damaged fruit	10
Broken fruit (see § 8.2.3)	10
Insect damaged and dirty fruit	5
Mouldy fruit	1
Total	15
Immature fruit	10

4. Food Additives, Maximum Level.

4.1 Sorbic acid and its sodium and potassium salts, 500 mg/kg, singly or in combination, expressed as sorbic acid.

4.2 Sulphur dioxide, 2,000 mg/kg.

5. Hygiene.

5.1 It is recommended that the product covered by the provisions of this standard be prepared and handled in accordance with the appropriate sections of the Recommended International Code of Hygienic Practice—General Principles of Food Hygiene (CAC/RCP 1-1969, Rev. 1) and the Recommended International Code of Hygienic Practice for Dried Fruits (CAC/RCP 3-1969).

5.2 To the extent possible in good manufacturing practice, the product shall be free from objectionable matter.

5.3 When tested by appropriate methods of sampling and examination, the product:

(a) shall be free from microorganisms capable of development under normal conditions of storage; and

(b) shall not contain any substances originating from microorganisms in amounts which may represent a hazard to health.

6. Weights and Measures.

Containers shall be as full as practicable without impairment of quality and shall be consistent with a proper declaration of contents for the product.

7. Labeling.

In addition to sections 1, 2, 4 and 6 of the *General Standard for the Labeling of Prepackaged Foods* (Ref. Codex STAN 1-1981) the following specific provisions apply:

7.1 *The name of the food.*

7.1.1 The name of the product as declared on the label shall be "Dried Apricots".

7.1.2 In addition, there shall appear on the label as part of the name or in close proximity to the name, the form of presentation as indicated below:

(a) Whole, unpitted;

(b) Whole, pitted;

(c) Whole, pitted, filled with . . . as appropriate;

(d) Halves;

(e) Slabs;

(f) Kamaradin.

7.2 List of Ingredients.

A complete list of ingredients shall be declared on the label in descending order of proportion in accordance with sub-sections 3.2(b) and 3.2(c) of the *General Standard for the Labelling of Prepackaged Foods* (Ref. Codex STAN 1-1981).

7.3 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 product is sold.

7.4 Name and Address.

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

7.5 Country of Origin.

7.5.1 The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

7.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

7.6 Lot Identification.

Each container shall be permanently marked in code or in clear to identify the producing factory and the lot.

7.7 Date Marking.

The date of minimum durability shall be declared using terms such as 'best before' or 'will keep at least until'.

7.8 Optional Declaration.

7.8.1 A size classification for dried apricot halves or whole dried apricots may be stated on the label if the pack complies with the appropriate requirements of sub-section 2.4.

7.8.2 The variety or varietal type of the dried apricots may be stated on the label.

8. Methods of Analysis and Sampling.

8.1 Sampling.

Sampling shall be in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods, CAC/RM 42-1969, with the following additions and modifications:

(a) When product is presented in containers of 10 kilograms or more the sample size (n) (e.g.—number of sample units examined) will be determined by dividing the total net weight of the lot in kilograms by 10 and utilizing the table for containers with a net weight greater than 4.5 kg.

8.2 Test Procedures.

8.2.1 Moisture.

According to the AOAC (1975) method (Official Methods of Analysis of the AOAC, 1975, 22.013: Moisture in Dried Fruits (7)—Official Final Action (and 22.008(c)) or according to the FAO/WHO Codex Alimentarius method CAC/RM 50-1974. (FAO/WHO Codex Alimentarius Methods of Analysis for Processed Fruits and Vegetables, 3rd Series, CAC/RM 50/53-1974, Moisture Determination—Electrical Conductance Method). However, in the case of dispute, the method of analysis of the AOAC, 1975, 22.013, Moisture in Dried Fruits, will be the reference method.

8.2.2 Sulphur Dioxide.

According to the AOAC (1975) method (Official Methods of Analysis of the AOAC, 1975, 20.104: Colorimetric Method (31)—Official Final Action (Applicable to Dried Fruit)).

8.2.3 Broken, Slabs, Dirty, Mouldy, Damaged and Immature Fruit.

Examine the fruits visually and weigh the defective items.

Dated: April 28, 1983.

Sanford A. Miller,
Director, Bureau of Foods.

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[Docket No. 75N-0184; DESI 597]

Certain Drug Products Containing an Anticholinergic in Combination with a Barbiturate; Drugs For Human Use; Drug Efficacy Study Implementation; Revocation of Exemption; Opportunity For Hearing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice revokes the temporary exemption for continued marketing of certain drug products containing an anticholinergic in combination with a barbiturate. Under the exemption the drug products have been allowed to remain on the market for continued study beyond the time limit scheduled for implementing the Drug Efficacy Study. This notice also reclassifies the drug products to lacking substantial evidence of effectiveness,

proposes to withdraw approval of applicable new drug applications, and offers an opportunity for a hearing on the proposal.

DATES: The revocation of the exemption is effective May 6, 1983; requests for hearing by June 6, 1983; material to support hearing request by July 5, 1983.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 75N-0184 and DESI 597, and directed to the attention of the appropriate office named below:

Requests for hearing, supporting data, and comments: Dockets Management Branch (HFA-305), Rm. 4-67, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFN-501), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, 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 published in the *Federal Register* of July 27, 1972 (37 FR 15028), FDA announced its evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group (NAS-NRC) on certain drugs containing an anticholinergic in fixed combination with a barbiturate. The drugs were classified as lacking substantial evidence of effectiveness and as possibly effective for various gastrointestinal disorders. In a notice published in the *Federal Register* of November 11, 1975 (40 FR 52644), FDA temporarily exempted certain anticholinergic/barbiturate combinations from the timetable established for implementing the Drug Efficacy Study. This exemption was conditioned upon the commitment of each manufacturer or distributor to conduct appropriate studies designed to determine the effectiveness of its particular combination drug product as adjunctive therapy in the treatment of peptic ulcer, or in the treatment of irritable bowel syndrome (IBS) or acute enterocolitis. The notice set a timetable for submission of protocols to FDA, for

review of the protocols by FDA, and for starting, reporting on, and completing the studies.

In the *Federal Register* of August 19, 1977 (42 FR 41917), FDA reclassified certain drug products that had previously been announced as eligible for the exemption to lacking substantial evidence of effectiveness, proposed to withdraw approval of their new drug applications, and offered an opportunity for a hearing on the proposal. The agency took this action because the particular manufacturers were not in compliance with the conditions for continued marketing announced in the November 11, 1975 notice and because no data had been submitted supporting the effectiveness of the drugs.

In the *Federal Register* of June 20, 1978 (43 FR 27490), FDA announced a change in its policy concerning anticholinergic/barbiturate combination products as previously announced in the November 11, 1975 notice. The changes required that each marketed drug be the subject of a new drug application (NDA) or an abbreviated new drug application (ANDA), and allowed an anticholinergic/barbiturate combination drug product to remain on or to enter the market even though its manufacturer was not conducting clinical studies of its effectiveness, as long as some other manufacturer was conducting clinical studies on a product which contained the same drugs and to which the same effectiveness conclusion would ultimately apply. The notice also granted an additional year for the completion of clinical studies and set a timetable for submission of final reports to FDA. Furthermore, in the same issue of the *Federal Register* (43 FR 26489), FDA rescinded the August 19, 1977 notice of opportunity for hearing insofar as it pertained to products covered by a relevant ongoing study of another drug product.

The National Center for Drugs and Biologics has completed its review of several reports submitted under the timetables established in the June 20, 1978 notice. These reports concern the following drug products:

1. **Donnatal Tablets (ANDA 86-676)** containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; A.H. Robins Co. 1211 Sherwood Ave., Richmond VA 23220 (reference number 90-005).

2. **Levsin With Phenobarbital Tablets (ANDA 86-640)** containing hyoscyamine sulfate and phenobarbital; Kremers-Urban Co., 5600 W. County Line Rd., P.O. Box 2038, Milwaukee, WI 53201 (reference number 90-013).

3. **Belladonal Tablets (ANDA 86-668)** and **Belladonal-S Tablets (ANDA 87-198)** each containing belladonna alkaloids of belladonna as the malates and phenobarbital; Sandoz Pharmaceuticals, Division of Sandoz, Inc., East Hanover, NJ 07936 (reference number 90-026).

4. **Butibel Tablets (no NDA)** and **Elixir (ANDA 86-664)** each containing belladonna extract and butabarbital sodium; McNeil Laboratories, 500 Office Center Dr., Fort Washington, PA 19034 (reference number 90-015).

The following drug products are affected by the conclusions on the above listed products and are subject to this notice:

1. **Donnatal Elixir (ANDA 86-661)** and **Capsules (ANDA 86-677)** each containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; A.H. Robins Co.

2. **Barophen Elixir (ANDA 86-546)** containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; National Pharmaceutical Manufacturing Co., Division of Barre-National, Inc., 4128 Hayward Ave., Baltimore, MD 21215.

3. **Bellastal Capsules (ANDA 86-657)** containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; Warton Laboratories, Inc., Division U.S. Ethicals, Inc., 37-02 48th Ave., Long Island, NY 11101.

4. **Susano Elixir (ANDA 86-587)** and **Tablets (ANDA 86-588)** each containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.

5. **Kinesed Tablets (no NDA)** containing atropine sulfate, hyoscyamine sulfate, hyoscyne hydrobromide, and phenobarbital; ICI United States, Inc., 3411 Silverside Rd., P.O. Box 751, Wilmington, DE 19897 (reference number 90-023).

Many tablet products containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; National Pharmaceutical Alliance, Suite 800, 2550 M St., NW., Washington, D.C. 20037 (reference number 90-016).

7. **Barbidonna Tablets (no NDA)** containing atropine sulfate, hyoscyamine sulfate, hyoscyne hydrobromide, and phenobarbital; Mallinckrodt, Inc., P.O. Box 5439, St. Louis, MO 63147 (reference number 90-017).

8. **Barbidonna Tablets (ANDA 86-589)**, **Barbidonna Elixir (ANDA 86-590)**, and

Barbidonna No. 2 Tablets (ANDA 87-572) each containing atropine sulfate, hyoscyamine sulfate, hyoscine hydrobromide, and phenobarbital; Wallace Laboratories, Division of Carter-Wallace, Inc., Half Acre Rd., Cranbury, NJ 08512.

9. Hybephen Tablets (ANDA 86-573) containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; Beecham Laboratories, Division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620 (reference number 90-018).

10. Belabar Tablets (no NDA) containing atropine sulfate, hyoscyamine hydrobromide, hyoscine hydrobromide, and phenobarbital; Armar-Stone Laboratories, Inc., 601 E. Kensington Rd., Mount Prospect, IL 60056 (reference number 90-020).

11. Spalix Elixir (ANDA 86-652) and Spalix Tablets (ANDA 86-653) each containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; Reid-Provident Laboratories, Inc., 640 Tenth St., N.W., Atlanta, GA 30318.

12. Neoquess Tablets (ANDA 86-665) containing atropine sulfate, hyoscyamine sulfate, scopolamine hydrobromide, and phenobarbital; O'Neal, Jones, and Feldman, Inc., 1304 Ashby Rd., St. Louis, MO 63132.

13. Levsin With Phenobarbital Elixir (ANDA 86-638) and Levsin-PB Drops (ANDA 86-639) each containing hyoscyamine sulfate and phenobarbital; Kremers-Urban Co.

14. Anaspaz-PB Tablets (no NDA) containing l-hyoscyamine sulfate and phenobarbital; B. F. Ascher & Co., 15501 W. 109th St., Lenexa, KS 66219 (reference number 90-014).

15. Chardonna-2 Tablets (ANDA 86-585) containing belladonna extract and phenobarbital; Wm. H. Rorer, Inc., 500 Virginia Dr., Ft. Washington, PA 19034 (reference number 90-010).

16. Butabar Belladonna Elixir (ANDA 86-561) containing belladonna alkaloids and butabarbital sodium; National Pharmaceutical Manufacturing Co.

17. Belladonna Alkaloids And Phenobarbital Tablets (ANDA 86-591) containing belladonna alkaloids and phenobarbital; Lemmon Co., P.O. Box 30, Sellersville, PA 18960.

18. Phenobarbital and Belladonna Elixir (ANDA 86-662) containing atropine sulfate, scopolamine hydrobromide, and phenobarbital; Pharmaceutical Associates, Inc., Division of Beach Products, 5220 S. Manhattan Ave., Tampa, FL 33611.

19. Homapin-10 PB Tablets (ANDA 87-441) and Homapin-5 PB Tablets (ANDA 87-443) each containing homatropine methylbromide and

phenobarbital; Mission Pharmacol Co., 1325 E. Durango St., Box 1676, San Antonio, TX 78296.

20. Bay-Ase Elixir (ANDA 86-673) containing atropine sulfate, hyoscyamine sulfate, hyoscine hydrobromide, and phenobarbital; Bay Laboratories, Inc., 3654 West Jarvis, Skokie, IL 60076.

21. Spasmatol Elixir (ANDA 86-697) containing atropine sulfate, hyoscyamine hydrobromide, scopolamine hydrobromide, and phenobarbital; Pharmaceutical Associates, Inc., P.O. Box 128, Conestee, SC 29636.

Approval of the following new drug application was previously withdrawn on May 28, 1982 (47 FR 23568), based upon the written request of the applicant:

Phenobarbital and Atropine Tablets (NDA 597) containing atropine sulfate and phenobarbital; The Vale Chemical Co., 1201 Liberty St., Allentown, PA 18102.

At the time approval of this application was withdrawn, FDA had reached no final conclusions concerning the effectiveness of the drug product. The conclusions announced in this notice are also applicable to this drug product and to any identical, similar, or related drug product as defined in 21 CFR 310.6.

Effectiveness Reports

A. Donnatal Tablets (Final Report Due on October 23, 1978).

1. Irritable Bowel Syndrome (IBS) Study—Protocol 03. On October 23, 1978, A. H. Robins, Co., in collaboration with ICI United States, Inc., submitted a progress report on protocol 03. This was a double-blind, parallel treatment, multi-investigator study designed to compare Donnatal Tablets with its components and placebo in relieving symptoms associated with IBS. Patients were randomly assigned to one of four treatment groups (Donnatal, belladonna alkaloids, phenobarbital, or placebo) for 4 weeks. Patients were examined before drug administration and after the first, second, third, and fourth weeks of medication for an evaluation of night pain, day pain, nature and frequency of stools, and other symptoms (flatulence, nausea, vomiting, anorexia, and belching are listed on the office visit case report form). Patients maintained daily diaries in which they recorded the duration and severity of their symptoms. Weekly, the investigators reviewed each patient's diary, assessed their symptoms, and made a global evaluation of their condition in relation to their pre-drug status.

Robins originally planned a 288-patient, 12-investigator study. As of

August 15, 1978, however, only eight investigators had entered 199 patients into the study, with 162 of them entered by four investigators (Rider, Coronato, Grossman, and Statman). Only 108 of the 199 completed the study; 14 withdrew and 77 were excluded from analyses.

Robins' report summarizes the weekly results for two sets of patients—those who ultimately completed the study and those evaluable at each week. The results, as reported by Robins for evaluable patients at each week, are summarized below. The results for patients who ultimately completed the study are similar.

SIGNIFICANT COMPARISONS ($P < .05$) FAVORING DONNATAL BY WEEK FOR EVALUABLE PATIENTS—PHYSICIAN RATINGS

	Donnatal v. belladonna alkaloids	Donnatal v. phenobarbital	Donnatal v. placebo
Night pain:			
Mean score	None	None	None
Percent improved	None	Week 3	Week 4
Percent symptom-free	Week 3	Week 1, 3	Week 1, 3, 4
Day pain:			
Mean score	None	None	None
Percent improved	None	None	None
Percent symptom-free	None	None	None
Global evaluation:			
Mean score	None	None	None
Percent with moderate or marked improvement	Week 3	Week 3, 4	Week 3, 4
Nature of stools:			
Percent with normal stools	None	None	Week 1

SIGNIFICANT COMPARISONS ($P < .05$) FAVORING DONNATAL BY WEEK FOR EVALUABLE PATIENTS—PATIENT RATINGS

	Donnatal v. belladonna alkaloids	Donnatal v. phenobarbital	Donnatal v. placebo
Night pain:			
Mean weekly score	None	None	None
Mean percentage of nights improved	None	None	None
Mean Percentage of nights symptom-free	Week 1	Week 1, 3, 4	Week 1
Day pain:			
Mean weekly score	None	None	None
Mean percentage of days improved	None	None	None
Mean Percentage of days symptom-free	None	None	None
Duration of pain:			
Mean daily duration of pain	None	None	None
Global evaluation:			
Mean weekly score	None	None	Week 3
Mean percentage of days improved	None	None	Week 3

As shown in the tables above, only occasional isolated comparisons favor Donnatal over its components or placebo. For example, when Donnatal is compared with belladonna alkaloids, only 3 out of a total of 72 statistical comparisons (the 18 items shown in the tables at each of 4 weeks) favor Donnatal at the 5 percent level of significance. These comparisons are freedom from night pain at week 1 for the patient ratings, freedom from night pain at week 3 for the physician ratings, and moderate or marked improvement at week 3 for the physician global evaluations. It should be noted, however, that there are no significant differences in the mean night pain scores or in the percent of patients whose night pain improved on either the patient ratings or the physician ratings at any time period. Similarly, there are no significant differences in mean scores for the physician global evaluations or for the patient global evaluations, both of which are more comprehensive assessments of overall symptomatic improvement than the artificial subset of those with marked or moderate improvement. In any event, it is apparent that three isolated, inconsistent favorable comparisons do not constitute substantial evidence of effectiveness. This number of significant comparisons (at the $p=0.05$ level) would be expected as a matter of chance even if there were no difference between Donnatal and belladonna alkaloids. The Donnatal versus phenobarbital comparisons and Donnatal versus placebo comparisons favor Donnatal to a slightly greater extent but these results, like the Donnatal versus belladonna alkaloid comparisons, are inconsistent and subject to similar analytical problems. There is thus no evidence that each component of Donnatal, and particularly the phenobarbital component (tested by the Donnatal versus belladonna comparisons), contributes to the effects claimed for the combination drug in the treatment of IBS, as required by 21 CFR 300.50.

Also, the report of the study is inadequate. First, the statistical analyses used by Robins are questionable. The firm combined the results of four investigators (Rider, Coronato, Grossman, and Statmen) as a single block and the results of the remaining investigators as another block. These data were then analyzed by the Mantel-Haenszel method. The data from the patient diaries, on the other hand, were treated as one group and analyzed by the Wilcoxon rank sum test, without blocking by investigator.

Robins does not justify either method of combining results, raising the possibility that these analytic decisions were made after the fact with knowledge of the data and results. In such cases, it is essential to justify the statistical methods used and to explain how analytic bias was minimized. 21 CFR 314.111(a)(5)(ii)(a) (4) and (5).

Second, even if Robins' statistical analyses had provided more positive evidence of effectiveness and their appropriateness had been better documented, any statistical conclusions would tend to be invalidated by the extremely large groups of patient exclusions. Robins only accounts for a few exclusions in its study summaries, again casting doubt upon its exclusions and subsequent analyses. 21 CFR 314.111(a)(5)(ii)(a) (4) and (5). At a minimum, Robins should have analyzed the entire patient group.

2. *Duodenal Ulcer Study—Protocol 01.* On October 23, 1978, Robins submitted a status report on protocol 01. This report lists the participating investigators and case reports received by the firm, and states whether a particular investigator's study was open or closed. It does not provide an evaluation of any data. However, Robins had previously submitted an interim report concerning protocol 01 on April 24, 1978. This interim report provides evaluations of data derived from 126 patients entered by 18 investigators (288 patients were originally planned). A review of the April 24, 1978 report follows.

Protocol 01 was a double-blind, parallel treatment, multi-investigator study designed to compare Donnatal with its components and placebo in improving symptoms and/or healing of duodenal ulcer. Patients with endoscopically documented, uncomplicated duodenal ulcer accompanied by pain were randomly assigned to one of four treatment groups (Donnatal, belladonna alkaloids, phenobarbital, or placebo) for 4 weeks. All patients received liquid antacid and were instructed to take the antacid on the occasion of epigastric pain. Patients maintained daily diaries in which they recorded pain intensity and duration. Physicians examined the patients before drug administration and following the first, second, third, and fourth weeks of medication to evaluate symptoms. Antacid consumption was also recorded. In addition, the original protocol required that patients be endoscopically reevaluated for ulcer healing at the end of the fourth week. This aspect of the protocol was changed to require endoscopy at the end of the second week, after approximately one-

third of the patients had already been enrolled.

Comparisons between treatment groups were based upon evaluations of day pain, night pain, duration of pain, antacid consumption, and the physicians' global evaluations of patient symptom improvement in relation to patient pre-drug status. No comparisons were made concerning the incidence of ulcer healing because of a lack of sufficient data pertaining to the second week endoscopy results.

In its interim report, Robins summarizes the results for the first week; no results are presented for the second, third, or fourth weeks. According to Robins' analyses, Donnatal is shown statistically superior ($P<.05$) to belladonna alkaloids and placebo, but not to phenobarbital, for the physicians' global evaluations of symptom improvement at week one. Donnatal is not shown statistically superior ($P<.05$) to its components or placebo for any other evaluated parameter at week one. Thus, Robins has failed to show that each component of Donnatal contributes the effects claimed for the combination drug in the treatment of duodenal ulcer, as required by 21 CFR 300.50.

At the present there are no data (either in the literature or submitted as part of material reviewed in these considerations) supporting a contention that anticholinergic drugs promote ulcer healing. On the other hand, there is substantial documentation that some therapeutic regimens (notably H_2 histamine antagonists, sucralfate, and some antacid regimens) do promote ulcer healing. Thus, drugs of the Donnatal class need be considered as adjunctive treatment to therapeutic regimens known to promote healing of duodenal ulcer. Robins did not evaluate the effects of Donnatal in patients receiving a treatment known to promote duodenal ulcer healing. The Robins study employed antacids in an "as needed" fashion and this antacid regimen is not known to promote ulcer healing. Therefore, the study is further deficient in failing to use an appropriate patient population. 21 CFR 314.111(a)(5)(ii)(a)(2)(i).

3. *Functional Upper Gastrointestinal Syndrome Study—Protocol 02.* On October 23, 1978, Robins submitted a status report on protocol 02. This study was designed to compare Donnatal with its components and placebo in improving symptoms associated with upper gastrointestinal syndrome for which no anatomical abnormality could be demonstrated. This report does not contain an evaluation of any data. However, in a previous interim report

dated October 26, 1977, Robins supplied observations in 71 evaluable patients out of a proposed 288 patient study. In this interim report, Robins concludes that no efficacy conclusions can be drawn from the limited number of observations but that trends favor continuation of the studies.

4. Functional Gastrointestinal Syndrome Study—Protocol 04. On October 26, 1977, Robins submitted an evaluative interim report on protocol 04. This study was designed to compare Donnatal with its components and placebo in improving various symptoms associated with functional gastrointestinal syndrome which could not be diagnosed as purely gastrointestinal or psychic in origin, and for which no anatomical abnormality could be demonstrated. This interim report presents observations in 15 evaluable patients out of a proposed 288 patient study. Robins concludes that the small number of patients studied precludes an evaluation of the data. In a later report dated April 24, 1978, Robins states that this study was discontinued because of a lack of patients. No further data were submitted.

B. Levsin With Phenobarbital Tablets (Final Report Due April 23, 1979). On April 30, 1979, Kremers-Urban submitted a final report of a study designed to compare Levsin With Phenobarbital with its components and placebo in the treatment of IBS. This was a double-blind, parallel treatment, multi-investigator study in which patients were randomly assigned to one of four treatment groups (Levsin With Phenobarbital, 1-hyoscyamine sulfate, phenobarbital, or placebo) for 5 weeks. Eighty-eight patients were entered into the study and evaluated. Kremers-Urban concludes that the results of the study do not show Levsin With Phenobarbital to be statistically superior to its components or placebo. Thus, there is no evidence that each component of Levsin With Phenobarbital contributes to the effects claimed for the combination drug, as required by 21 CFR 300.50.

C. Belladanal Tablets (Final Report Due March 8, 1979). On March 8, 1979, Sandoz submitted a final report on two double-blind, parallel treatment, multi-clinic studies (numbers 7 and 8) designed to compare Belladanal with its components and placebo in improving symptoms associated with IBS. Patients were randomly assigned to one of four treatment groups (Belladanal, bellafoline, phenobarbital, or placebo) for 4 weeks. Out of a total of 365 patients originally entered into the

study, 270 completed the 4 weeks of treatment.

The investigators evaluated the patients before drug administration and at the end of each of the 4 study weeks. Patients recorded self-ratings of symptoms in a daily diary. Both the investigators and patients rated abdominal pain, constipation, diarrhea, feelings of abdominal distention, belching, anorexia, nausea, borborygmus, and flatulence. The investigators also rated abdominal tenderness and hyperactive bowel signs, and made global evaluations of patient illness. As a secondary measure, the investigators assessed the effects of the test drugs on certain psychological and emotional factors using a modified Hamilton Anxiety Scale.

In its report, Sandoz presents results for study 7, study 8, and the two studies combined. These results are further broken down into those obtained during the initial 7 days of treatment and those obtained during the full 28 days of treatment.

With respect to the gastrointestinal observations, Sandoz's analyses do not show Belladanal significantly superior ($P < .05$) to its components or placebo. In study 7, there is no measurement for which Belladanal is significantly superior ($P < .05$) to both of its components and no measurement for which it is superior to either component over the full 28 days of treatment. The only comparisons which significantly favor ($P < .05$) Belladanal over either component occur during the first week, where Belladanal is favored over phenobarbital for belching and gurgling in the abdomen. Trends do not favor Belladanal, either. If comparisons exclusively concerned with the first week are disregarded, 42 out of 72 comparisons show trends that favor bellafoline over Belladanal, and another 42 out of 72 comparisons show trends that favor phenobarbital over Belladanal. Furthermore, except for a few isolated significant comparisons, Belladanal is generally not shown to be significantly superior ($P < .05$) to placebo over the full 28 days of treatment.

In study 8, the gastrointestinal related results are even more negative. Belladanal is not shown to be significantly better ($P < .05$) than phenobarbital at any point, and only four comparisons, which occur at the first week, show Belladanal significantly superior ($P < .05$) to bellafoline. Moreover, 96 out of 117 comparisons show trends favoring phenobarbital over Belladanal. The pooled data show similar results for the gastrointestinal observations. No comparisons

significantly favor ($P < .05$) Belladanal over its components.

Thus, Sandoz has failed to demonstrate that each component of Belladanal contributes to the effects claimed for the combination drug in relieving gastrointestinal symptoms associated with IBS, as required by 21 CFR 300.50.

Sandoz also analyzed the results concerning the patients' psychological and emotional states. These results are similar to those for gastrointestinal symptoms; Belladanal did not produce a statistically significant effect ($P < .05$) favoring it over its components or placebo. However, even if positive results were obtained for the observed psychological and emotional factors, it would not provide evidence that Belladanal is effective in the treatment of IBS, since it would not show that the drug improves some gastrointestinal clinical parameter.

The design and the report of the study are also deficient. First, the investigators used a 7-point scale (no pain to severe pain) to evaluate a patient's symptom severity and to make a global evaluation of the patient's illness (very much improved to very much worse). These scales do not contain clearly defined degrees of severity or improvement. It is thus difficult to determine whether each investigator evaluated patients in a similar manner. This is especially relevant where data are obtained from two multi-center studies involving 19 investigators. This makes the results of the study difficult to interpret and potentially unreliable. 21 CFR 314.111(a)(5)(ii)(c)(3).

Second, the protocol specified that patients were not to take any anticholinergics, analgesics, antacids, salicylates, sedatives, hypnotics, tranquilizers, or antidepressants during the clinical trials. Sandoz notes that this aspect of the protocol was difficult to enforce and only those patients who "significantly deviated" from it were dropped from the study. Sandoz does not define "significantly deviated," however, nor does it provide any information on the types of concomitant drugs used, the dose and duration of the concomitant drugs, and when in the trials the concomitant drugs were taken. Therefore, it is impossible to determine whether the treatment groups were comparable in terms of the use of drugs other than the test drugs. 21 CFR 314.111(a)(5)(ii)(c)(2)(iii).

D. Butibel Tablets and Elixir (Final Report Due November 9, 1978). On November 8, 1978, McNeil, in collaboration with Wm. H. Rorer & Co., submitted a final report concerning a

double-blind, parallel treatment, multi-investigator study designed to compare the effects of Butibel with its components and placebo in the symptomatic relief of duodenal ulcer in patients receiving antacids (23 investigators and 131 patients). Patients were assigned to one of four treatment groups (combination of sodium butabarbital 30 milligrams (mg) and belladonna extract 30 mg, sodium butabarbital 30 mg, belladonna extract 30 mg, or placebo) for 4 weeks. The investigators recorded observations before a patient received an upper GI Series, before test drug administration, and after each of the 4 study weeks. Patients recorded observations in a daily diary. The investigators evaluated epigastric pain, hyperactive peristalsis (borborygmi), heartburn, nausea, vomiting, nocturnal awakening due to pain, diarrhea, constipation, abdominal cramps, and degree of tenderness upon palpation of the abdomen. Patients recorded antacid consumption and reported time lost from work. Both the investigators and the patients made global evaluations of symptoms weekly, and at the last office visit both attempted to predict whether the study medication was active or not. As a secondary measure, the investigators evaluated patients' responses to treatment for certain psychological and emotional factors using a Hamilton Anxiety Scale.

In its summary of the results of this study, McNeil states, "Epigastric pain provides a reliable estimate of the efficacy of agents indicated for the relief of symptoms of duodenal ulcer" and supplied the following table (designated as Table I by McNeil) in support of its claims of effectiveness for Butibel:

EPIGASTRIC PAIN

	Week			
	1	2	3	4
Combination (C) vs Placebo (P)	C>P	C>P	C>P	C>P
Sodium Butabarbital (S) vs Placebo (P)	S>P	S>P	S>P	S>P
Belladonna Extract (B) vs Placebo (P)	B>P	B>P	B>P	B>P
Combination (C) vs Belladonna Extract (B)	C>B	B>C	C>B	B>C
Combination (C) vs Sodium Butabarbital (S)	C>S	C>S	C>S	C>S

Note.—For each comparison, the first product has numerically better results than the second, i.e., C>P means C has numerically better results than P.

* P<.05.

* P<.01.

It is apparent that the results reported in this table do not support the effectiveness of Butibel. At no week does the combination provide significantly greater ($P<.05$) pain relief than either of its components alone. In

fact, the belladonna component is numerically superior to the combination at weeks 2 and 4. Furthermore, this table shows only minimal, if any, evidence of a difference between the combination and placebo. Thus, these results fail to demonstrate that each component of the combination contributes to the effects claimed for the drug in the treatment of duodenal ulcer, as required by 21 CFR 300.50.

In addition, it is not clear what statistical analyses were used to derive the conclusions presented in McNeil's Table I. The supplied computer printouts which McNeil claims provide complete details of the analyses supporting its conclusions are poorly documented and do not permit evaluation. 21 CFR 314.111(a)(5)(ii)(a)(5).

Furthermore, the statistical reports and clinical data displays presented by McNeil contradict the firm's summary of its results. McNeil's Table XI "Kruskal-Wallis One-Way Analysis of Variance for Treatments at Each Visit by Symptom" (not reproduced here) lists under epigastric pain, p-values which indicate no significant differences between the four treatment groups for any time period. McNeil's Table X, which lists the mean symptom severity scores, contradicts some of the trends presented in the preceding table for epigastric pain. Table X shows sodium butabarbital numerically better than the combination at week 4 in contradiction to McNeil's Table I. McNeil's statistical report also states, "Except for constipation at week 1 ($P=.05$), all other symptoms demonstrated similar results among the four treatments ($P>.10$). For constipation at week 1, the multiple comparison test indicated that placebo patients were significantly more improved than Butibel or Sodium Butabarbital patients." This quoted paragraph appears to be in agreement with McNeil's Table XI. McNeil's summary of significant levels presented in its Clinical Display Section also shows no significant differences between treatment groups for epigastric pain.

For other observations McNeil summarizes:

The results of the measurements for the other gastrointestinal symptom parameters tested were more variable than those for epigastric pain. . . . reduction in antacid consumption was similar for all treatment groups. All treatment groups showed similar significant improvement on the Hamilton Anxiety Scale in the measurements for gastrointestinal symptoms and for Total Score.

McNeil makes no claims regarding these observations.

Other information not mentioned in McNeil's summary includes results of patient and investigator global evaluations, patient and investigator predictions as to the drug received, and time lost from work due to ulcer symptomatology. No differences were found by the firm among the four treatment groups for either the patient or the investigator global evaluations at week 2, 3, or 4 using a Kruskal-Wallis nonparametric test. A significant difference among the treatment groups was found for the patient and investigator global evaluations at week 1. McNeil then states in its statistical report, "The multiple comparison test demonstrates a significantly better response for Butibel patients as compared to placebo patients ($P=0.05$), as judged by the patient. Similarly, the investigators evaluated the Butibel patients to have a better response than placebo patients ($P=0.07$)." However, McNeil's Table XVIII "Means and Standard Deviations" shows placebo patients with a lower (better) mean score than Butibel for both the patient and physician global evaluations at week 1. Furthermore, the number of belladonna extract patients judged to have marked or moderate improvement compared to the number of Butibel patients judged to have marked or moderate improvement, favors belladonna extract over Butibel (McNeil's Table XVIII).

No significant differences are reported among the four treatment groups for time lost from work. No claim is made of a differentiation among the three active drugs in terms of predicting whether a patient received an active drug or not.

Overall, neither McNeil's summary of its epigastric pain results (McNeil's Table I) nor its specific statistical reports and clinical data displays provide evidence that the tested combination is superior to its components or placebo in providing relief of symptoms associated with duodenal ulcer. Thus, McNeil has failed to show that each component of the tested combination drug contributes to the effects claimed for it, as required by 21 CFR 300.50.

Furthermore, since anticholinergic drugs have not been shown to promote ulcer healing, the tested combination drug should have been studied in patients receiving a treatment known to promote duodenal ulcer healing (see discussion under Donnatal Duodenal Ulcer Study above). McNeil's study employed antacids in an "as needed" fashion and this antacid regimen is not known to promote ulcer healing. Therefore, this study is deficient in

failing to use an appropriate patient population. 21 CFR 314.111(a)(5)(ii)(a)(2)(i).

In addition, even if positive results were obtained in this study, it is unclear whether the results would apply to Butibel. The active test drugs as used in the clinical trials contained 30 mg of each active component. Butibel contains 15 mg of each active component. Although McNeil claims that one capsule of the combination as used in the clinical trials is bioequivalent to two capsules of Butibel, it presents no evidence to demonstrate this claim. 21 CFR 314.111(a)(5)(ii)(b).

Conclusion/Revocation of Exemption/Notice of Opportunity for Hearing

No person has yet submitted any data which would support reclassification to effective of any of the above listed drug products. Furthermore, adequate time has been allowed for the design and conduct of acceptable studies to demonstrate drug effectiveness. Accordingly, the Director of the National Center for Drugs and Biologics hereby revokes the temporary exemption granted to these drug products by the November 11, 1975 and June 20, 1978 notices, and proposes to withdraw approval of the new drug applications subject to this notice.

On the basis of all the data and information available to him, the Director of the National Center for Drugs and Biologics is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and, for combination drug products, 21 CFR 300.50, demonstrating the effectiveness of the above listed drug products.

Therefore, notice is given to the holders of the new drug applications, to persons who manufacture or distribute a drug product listed above that is not the subject of an approved new drug application, and to all other interested persons that the Director of the National Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications (except NDA 597) and all amendments and supplements thereto on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the applications, shows there is a lack of substantial evidence that the drug products will have the

effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In addition to the holders of the new drug applications specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product that is identical, related, or similar to the approved drug products named above and to the drug product previously subject to NDA 597, as defined in 21 CFR 310.6. This includes, but is not limited to, the manufacturers or distributors of the drug products listed above that are not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug products that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962 or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants and all other persons subject to this notice under 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related, or similar drug products.

An applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before June 8, 1983, written notice of appearance and request for hearing, and (2) on or before July 5, 1983, the data, information, and analyses relied on to justify a hearing, as

specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other persons subject to this notice under 21 CFR 310.6 to file a timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice shall be filed in four copies. Such submissions except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets, Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice issued 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 the Director of the National Center for Drugs and Biologics (see 21 CFR 5.82 and 47 FR 26913 published in the Federal Register of June 22, 1982).

Dated: April 13, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-12136 Filed 5-5-83; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings: Denver District Office, chaired by Leroy Gomez, District Director. The topics to be discussed are: Direct-to-Consumer Advertising of Prescription Drugs, Updates on Sodium Labeling, Medical Device Approvals, and Dietary Aids and Diets.

DATE: Wednesday, May 11, 1983, 7:30 p.m.

ADDRESS: Cascade County Extension Office, 1211 Northwest Bypass, Great Falls, MT 59404.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Brunner, Consumer Affairs Officer, Food and Drug Administration, 500 U.S. Customhouse, 19th and California Sts., Denver, CO 80202, 303-837-4915. Denver District Office, chaired by Leroy Gomez, District Director. The topics to be discussed are: Direct-to-Consumer Advertising of Prescription Drugs, with Updates on Diets and Dietary Aids, Sulfiting Agents, and BHA (butylated hydroxy anisole).

DATE: Thursday, May 12, 1983, 1:30 p.m.

ADDRESS: Utah Department of Agriculture, 350 North Redwood Rd., Salt Lake City, UT 84116.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Brunner, Consumer Affairs Officer, Food and Drug Administration, 500 U.S. Customhouse, 19th and California Sts., Denver, CO 80202, 303-837-4915.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 28, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11828 Filed 5-5-83; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by Lynn Campbell, Director, San Juan District Office.

DATE: Tuesday, May 24, 1983, 1 p.m.

ADDRESS: The meeting will be held at the LaConcha Hotel, Ashford Ave., Condado, San Juan, PR.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small businesses and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: April 28, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-11829 Filed 5-5-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N-0184; DESI 597]

Bentyl Syrup With Phenobarbital; Drug Efficacy Study Implementation; Revocation of Temporary Exemption; Proposal To Withdraw Approval of New Drug Application; Opportunity for Hearing

Correction

In FR Doc. 83-9463, beginning on page 15717, in the issue of Tuesday, April 12, 1983, make the following changes:

1. On page 15718, in the third column, in paragraph 28, in the fourth line "Belladonna" should read "Belladonna"; in paragraph 31, in the fifth line "Belladonna" should read "Belladonna".

2. On page 15719, in the third column, in the third paragraph, in the sixth line, "June 3" should read "June 13".

BILLING CODE 1505-01-M

[Docket No. 82P-0303]

Downs Surgical, Inc.; Sugita Aneurysm Clip; Panel Recommendation on Petition for Reclassification

Correction

In FR Doc. 83-9319, beginning on page 15721, in the issue of Tuesday, April 12, 1983, on page 15722, in the first column, in the first paragraph, in the second line, "(22)" should read "(2)".

BILLING CODE 1505-01-M

Pulmonary-Allergy Drugs Advisory Committee; Republishing of Meeting Notice

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is republishing a portion of the notice announcing a meeting of the Pulmonary-Allergy Drugs Advisory Committee scheduled for May 13, 1983. The meeting was announced in the Federal Register of April 29, 1983 (48 FR 19470). This portion of the notice is being republished because of a revised schedule and a change in the open committee discussion concerning sulfiting agents used as antioxidants in drug products and the pharmacokinetics and labeling of sustained release theophylline preparations. These topics will be scheduled for discussion at an advisory committee meeting to be announced later for June 1983. The May 13 meeting will deal solely with the over-the-counter status of metaproterenol metered dose inhalers. These inhalers do not contain sulfiting agents.

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 public hearing, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 4 p.m.; Conrad J. Leder, National Center for Drugs and Biologics (HFN-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3500.

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 will discuss whether metaproterenol metered dose inhalers should continue to be marketed over-the-counter (OTC).

Dated: May 4, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-12386 Filed 5-5-83; 11:17 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 29.

Public Health Service

National Institutes of Health

Subject: Study of Cervicitis in Pregnancy—New

Respondents: Women

Subject: A Cohort Study of Second Primary Tumors following Chemotherapy for Gestational Trophoblastic Disease—New

Respondents: Women with trophoblastic disease and their physicians

OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Premarket Notification Submission (0910-0120)—Extension/No Change

Respondents: Medical device manufacturers

Subject: Required Registration, Recordkeeping, and Reporting by Importers of Nonhuman Primates (0920-0096)—Extension/No Change

OMB Desk Officer: Richard Elsingier

Centers for Disease Control

Subject: National Disease Surveillance Program—I. Case Reports (0920-0009)—Revision

Respondents: State and territorial health departments

Subject: Study of Birth Defects Risk Factors Including Military Service in Vietnam (0920-0094)—Revision

Respondents: Individuals

OMB Desk Officer: Fay S. Iudicello

Office of the Assistant Secretary for Health

Subject: Grant Applications for Research Projects on Adolescent Pregnancy and Family Life—New

Respondents: Colleges and universities, research institutes, hospitals and health centers, voluntary organizations

Subject: Grant Applications for Demonstration Projects on Adolescent Pregnancy and Family Life—New

Respondents: Voluntary organizations, hospitals, health clinics, and other community institutions that serve adolescents

OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: National (Rural) Swing-Bed Program Evaluation—Preliminary Plan

Respondents: Hospitals having swing-bed agreements with the Department, a comparison group of similar non-swing bed hospitals

Subject: Medicare Reimbursement Settlement Data for Hospitals and Skilled Nursing Facilities (0938-0159)—Extension/No Change

Respondents: Hospitals and Skilled Nursing Facilities

Subject: Medicare Reimbursement Settlement Data for Outpatient Physical Therapy Providers (0938-0142)—Reinstatement

Respondents: Outpatient physical therapy providers

Subject: Periodic Interim Payment Quarterly Report for Home Health Agencies (0938-0153)—Reinstatement

Respondents: Home Health Agencies in the Medicare program

Subject: Evaluation of Medicare Competition Demonstration—Preliminary Plan

Respondents: Medicare beneficiaries affected by Medicare demonstrations

OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Capability of 8(a) Contractors—New

Respondents: Small professional services firms approved for Procurement assistance under Section 8(a) of the Small Business Act

Subject: Informal Caregivers Survey Follow-Up—New

Respondents: Informal caregivers of channeling demonstration clients

Subject: HHS Procurement Manual Part 3-3.55 Solicitations for Negotiated Procurements—New

Respondents: State, local governments, businesses or other institutions

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

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: April 29, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-12010 Filed 5-5-83; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial Number AZ-AZ027-000001]

Arizona: Realty Action; Competitive Sale of Public Land in Yuma County

The Bureau of Land Management will offer the following described lands for sale at a public auction on July 14, 1983, at 1:00 p.m. at the Gila Bend Civic Center. There will be 24 tracts of land in three different sale areas. It has been determined that the sale of these tracts is consistent with section 205(1)(c) of the Federal Land Policy and Management Act of October 21, 1976. The lands will be offered for sale at no less than the appraised fair market value indicated below.

GILA AND SALT RIVER MERIDIAN, ARIZONA

Tract No.	Legal description	Acres	Value
Turtle Back Sale Area:			
1	T. 3 S., R. 11 W., sec. 22 NE 1/4	160.0	\$42,400
2	T. 3 S., R. 11 W., sec. 22 SE 1/4	160.0	42,400
3	T. 3 S., R. 11 W., sec. 23 NW 1/4	160.0	42,400
4	T. 3 S., R. 11 W., sec. 23 SW 1/4	160.0	42,400
5	T. 3 S., R. 11 W., sec. 27 NE 1/4	160.0	40,000
6	T. 3 S., R. 11 W., sec. 27 SE 1/4	160.0	40,000
7	T. 3 S., R. 11 W., sec. 28 1/2 SW 1/4, sec. 33 NW 1/4	240.0	60,000
8	T. 3 S., R. 11 W., sec. 28 1/2 SE 1/4, sec. 33 NE 1/4	240.0	60,000

GILA AND SALT RIVER MERIDIAN, ARIZONA—
Continued

Tract No.	Legal description	Acres	Value
9	T. 3 S., R. 11 W., sec. 27 S½SW¼, sec. 34 NW¼	240.0	60,000
10	T. 3 S., R. 11 W., sec. 34 NE¼	160.0	42,400
11	T. 3 S., R. 11 W., sec. 33 SW¼	160.0	42,400
12	T. 3 S., R. 11 W., sec. 33 SE¼	160.0	42,400
13	T. 3 S., R. 11 W., sec. 34 SW¼	160.0	42,400
14	T. 3 S., R. 11 W., sec. 34 SE¼	160.0	42,400
Texas Hill Sale Area:			
1	T. 7 S., R. 14 W., sec. 13 S½NE¼, SE¼	240.0	60,000
2	T. 7 S., R. 14 W., sec. 13 SE¼NW¼, SW¼, sec. 24, N½NW¼	280.00	70,000
3	T. 7 S., R. 14 W., sec. 14 SE¼, S½, SW¼	240.0	60,000
Aztec Sale Area:			
1	T. 7 S., R. 11 W., sec. 6 Lots 1, 2, S½, NE¼	157.75	35,500
2	T. 7 S., R. 11 W., sec. 6 Lots 3, 4, 5, SE¼NW¼	151.99	34,200
3	T. 7 S., R. 11 W., sec. 6 Lots 6, 7, E½SW¼	152.85	34,400
4	T. 7 S., R. 11 W., sec. 6 SE¼	160.00	36,000
5	T. 7 S., R. 11 W., sec. 7 NE¼, NW¼, SE¼, W¼, W½NE¼SE¼	210.00	47,250
6	T. 7 S., R. 11 W., sec. 7 Lots 1, 2, 3, E½NW¼, NE¼SW¼	228.94	51,500
7	T. 7 S., R. 11 W., sec. 8 NW¼	160.00	36,000

The above aggregates 4,461.5 acres of land in Yuma County.

Upon publication of this notice in the *Federal Register*, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws, for a period of 2 years or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the *Federal Register* prior to the expiration of the 2-year period.

Lands not sold on July 14, 1983, will be reoffered for sale by competitive bid at the Phoenix District Office at 10:00 a.m. on October 5, 1983. Any remaining unsold lands will be available for over-the-counter purchase for the remainder of the 2 years.

All of the parcels listed will be subject to the following reservations when patented:

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine, and remove such deposits.

The following tracts in the Turtleback Sale Area have additional reservations:

1. All tracts in the Turtleback Sale Area will be sold subject to oil and gas Lease A-14852.

2. Turtleback tracts 11, 12, 13, and 14 will be sold subject to Arizona Public Service powerline right-of-way AR-010756.

3. Turtleback tracts 11, 12, 13, and 14 will be sold subject to Arizona Public Service gas line right-of-way AR-034091.

4. A public road right-of-way will be reserved for the east 33' of tracts 1, 2, 5, 6, 10 and 14. Additionally, a public road easement will be reserved on the south 33' of tract 5.

The following parcels in the Texas Hill Sale Area have additional reservations.

1. Tract 1 will be sold subject to oil and gas lease A-18112.

2. Tract 2 will be sold subject to oil and gas lease A-18112 and oil and gas lease A-18113.

There are no known mineral values in the land. If the successful bidder wishes, he/she may apply for the reserved mineral estate under the provision of Sec. 209(b) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C., 1718).

Additional information concerning these lands, terms and conditions of the sale, and bidding instructions may be obtained from the Phoenix District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 or by calling (602) 241-2511.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the Proposed Action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: April 22, 1983.

W. K. Barker,
District Manager.

(FR Doc. 83-12064 Filed 5-5-83; 8:45 am)
BILLING CODE 4310-84-M

[Serial Number AZ-AZ027-000003]

Arizona: Realty Action; Competitive Sale of Public Land in Pima County

The Bureau of Land Management will offer the following described lands for

sale at a public auction on July 12, 1983, at 1:00 p.m. at the Phelps Dodge Recreation Hall in Ajo. There will be six tracts of land offered at the sale. It has been determined that the sale of these tracts is consistent with Sec. 205(1)(c) of the Federal Land Policy and Management Act of October 21, 1976. The lands will be offered for sale at no less than the appraised fair market value indicated below.

GILA AND SALT RIVER MERIDIAN, ARIZONA

Tract No.	Legal description	Acres	Value
Ajo Sale Area:			
1	T. 12 S., R. 6 W., sec. 3 S½SW¼SE¼SE¼	5.0	\$12,500
2	T. 12 S., R. 6 W., sec. 3 N½SW¼SE¼SE¼	5.0	12,500
3	T. 12 S., R. 6 W., sec. 3 S½NW¼SE¼SE¼	5.0	12,500
4	T. 12 S., R. 6 W., sec. 3 N½NW¼SE¼SE¼	5.0	12,500
5	T. 12 S., R. 6 W., sec. 3 SW¼NE¼SE¼	10.0	22,000
6	T. 12 S., R. 6 W., sec. 3 NW¼NE¼SE¼	10.0	22,000

The above aggregates 40.0 acres of land in Pima County.

Upon publication of this notice in the *Federal Register*, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including mining laws, except mineral leasing laws, for a period of 2 years or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the *Federal Register* prior to the expiration of the 2-year period.

Lands not sold on July 12, 1983, will be reoffered for competitive bid at the Phoenix District Office on October 5, 1983. Any remaining unsold lands will be available for over-the-counter purchase for the remainder of the 2 years.

All of the parcels listed will be subject to the following reservations when patented:

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine, and remove such deposits.

3. A reservation of all minerals to the United States with the right to prospect for, mine, and remove such deposits.

There are no known mineral values in the land. If the successful bidder wishes, he/she may apply for the reserved mineral estate under the provision of Sec. 209(b) of the Federal Land Policy

and Management Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1718).

Additional information concerning these lands, terms and conditions of the sale, and bidding instructions may be obtained from the Phoenix District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 or by calling (602) 241-2511.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the Proposed Action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: April 22, 1983.

W. K. Barker,

District Manager.

[FR Doc. 83-12053 Filed 5-6-83; 8:45 am]

BILLING CODE 4310-84-M

[Serial Number AZ-AZ027-000002]

Arizona: Realty Action Competitive Sale of Public Land in La Paz County

The Bureau of Land Management will offer the following described lands for sale at a public auction on July 7, 1983, at 1:00 p.m. at the Bouse Community Center. There will be 24 tracts of land offered at the sale. It has been determined that the sale of these tracts is consistent with section 205(1)(c) of the Federal Land Policy and Management Act of October 21, 1976. The lands will be offered for sale at no less than the appraised fair market value indicated below.

GILA AND SALT RIVER MERIDIAN, ARIZONA

Tract No.	Legal description	Acres	Value
La Paz Sale Area:			
1	T. 5 N., R. 12 W., sec. 5 SW 1/4	160.0	\$76,000
2	T. 5 N., R. 12 W., sec. 6 Lots 1, 2	80.1	32,000
3	T. 7 N., R. 17 W., sec. 35 NE 1/4 NW 1/4	10.0	5,000
4	T. 7 N., R. 17 W., sec. 35 SE 1/4 NW 1/4	10.0	5,000
5	T. 7 N., R. 17 W., sec. 35 W 1/4 NW 1/4	20.0	9,000
6	T. 7 N., R. 17 W., sec. 36 NE 1/4 NW 1/4	10.0	4,500
7	T. 7 N., R. 17 W., sec. 36 SE 1/4 NW 1/4	10.0	5,000
8	T. 7 N., R. 17 W., sec. 36 W 1/4 NW 1/4	20.0	9,000
9	T. 7 N., R. 17 W., sec. 15 NE 1/4 SE 1/4	40.0	17,000
10	T. 5 N., R. 16 W., sec. 4 SW 1/4, N 1/4 SE 1/4 W 1/4 SE 1/4	220.0	60,000
11	T. 5 N., R. 16 W., sec. 5 Lots 3, 4	160.92	34,600

GILA AND SALT RIVER MERIDIAN, ARIZONA—Continued

Tract No.	Legal description	Acres	Value
12	T. 5 N., R. 16 W., sec. 5 SW 1/4	160.00	34,400
13	T. 5 N., R. 16 W., sec. 5 SE 1/4	160.0	34,400
14	T. 5 N., R. 16 W., sec. 9 NE 1/4	160.0	36,000
15	T. 5 N., R. 16 W., sec. 10 NW 1/4	160.0	36,000
16	T. 5 N., R. 15 W., sec. 18 NW 1/4	160.0	34,400
17	T. 5 N., R. 15 W., sec. 18 NE 1/4	160.0	36,000
18	T. 5 N., R. 15 W., sec. 17 NW 1/4	160.0	36,000
19	T. 5 N., R. 15 W., sec. 17 NE 1/4	160.0	36,000
20	T. 5 N., R. 15 W., sec. 17 SE 1/4	160.0	34,400
21	T. 5 N., R. 15 W., sec. 17 SW 1/4	160.0	36,000
22	T. 5 N., R. 15 W., sec. 20 NW 1/4	160.0	34,400
23	T. 5 N., R. 15 W., sec. 20 NE 1/4	160.0	36,000
24	T. 5 N., R. 12 W., sec. 7 Lots 2, 3	77.4	36,800

The above aggregates 2,739.42 acres of land in La Paz County.

Upon publication of this notice in the Federal Register, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including mining laws, except mineral leasing laws, for a period of 2 years or until the lands are sold. The segregative effect may otherwise be terminated by the authorized officer by publication of a termination notice in the Federal Register prior to the expiration of the 2-year period.

Lands not sold on July 7, 1983, will be reoffered for sale by competitive bid at the Phoenix District Office at 10:00 a.m. on October 5, 1983. Any remaining unsold lands will be available for over-the-counter purchase for the remainder of the 2 years.

All of the parcels listed will be subject to the following reservations when patented:

1. A right-of-way for ditches and canals constructed by the authority of the United States. (Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.)

2. A reservation of all oil and gas to the United States with the right to prospect for, mine, and remove such deposits.

3. A reservation of all minerals to the United States with the right to prospect for, mine, and remove such deposits.

The following tracts in the La Paz Sale Area have additional reservations:

Tract 2:

1. Will be sold subject to oil and gas lease A-13482.

Tract 3:

1. Will be sold subject to oil and gas lease A-13695.

Tract 4:

1. Will be sold subject to oil and gas lease A-13695.

Tract 5:

1. Will be sold subject to oil and gas lease A-13695.

Tract 6:

1. Will be sold subject to Arizona Department of Transportation right-of-way, PHX-079054.

Tract 7:

1. Will be sold subject to Arizona Department of Transportation right-of-way, PHX-079054.

Tract 8:

1. Will be sold subject to Arizona Department of Transportation right-of-way, PHX-079054.

Tract 9:

1. Will be sold subject to oil and gas lease A-16800.

Tract 10:

1. Will be sold subject to oil and gas lease A-15328.

2. Will be sold subject to Arizona Public Service powerline right-of-way, A-8039.

Tracts 11, 12, and 13:

1. Will be sold subject to oil and gas lease A-15328.

Tract 14:

1. Will be sold subject to Arizona Public Service powerline right-of-way, A-8039.

Tract 16:

1. Will be sold subject to oil and gas lease A-11156.

Tract 17:

1. Will be sold subject to oil and gas lease A-11156.

Tracts 20 and 21:

1. Will be sold subject to Arizona Public Service powerline right-of-way, AR-03209.

2. Will be sold subject to oil and gas lease A-11156.

There are no known mineral values in the land. If the successful bidder wishes, he/she may apply for the reserved mineral estate under the provision of section 209(b) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1718).

Additional information concerning these lands, terms and conditions of the sale, and bidding instructions may be obtained from the Phoenix District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 or by calling (602) 241-2511.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the Proposed Action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this

reality action will become the final determination of the Department of the Interior.

Dated: April 22, 1983.

W. K. Barker,

District Manager.

[FR Doc. 83-12052 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

Colorado; Site Specific Call for Expressions of Interest in Oil Shale Leasing; Solicitation of Public Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Solicitation of public comments.

SUMMARY: This notice announces the opportunity for industry to express interest in specific tracts or areas of public lands for possible leasing of deposits of oil shale, which deposits may include Kerogen and other minerals and commercial interest (excluding oil and gas) within the Piceance Basin Planning Area of the White River Resource Area of the Craig District. Organizations and individuals are also invited to identify specific areas for possible protection from mineral leasing.

The information submitted will be used in the preparation of a Resource Management Plan in accordance with the land use planning requirements of the Federal Land Policy and Management Act. The plan will identify areas for priority management of a full range of resource values including oil shale. It may also identify tracts which could eventually be leased for oil shale should the Department of Interior establish an Oil Shale Leasing Program.

DATE: Responses to this notice must be received by July 11, 1983.

ADDRESS: Responses should be sent to: Bureau of Land Management, White River Resource Area, Oil Shale Projects Team, PO Box 928, Meeker, Colorado 81641.

FOR FURTHER INFORMATION CONTACT: John Singlaub, Team Leader at the address above. Telephone (303) 878-3601.

SUPPLEMENTARY INFORMATION: This is to advise all interested parties that the official call for site specific expressions of interest in Federal leasing of deposits of oil shale which mineral deposits may include kerogen and other mineral deposits of commercial interest (excluding oil and gas), within the Piceance Basin Planning Area of the White River Resource Area, is now in

effect. The Piceance Basin Planning Area generally includes the public lands southwest of Meeker, southeast of Rangely, and northwest of Rifle, in Rio Blanco and Garfield Counties, Colorado.

Expressions of interests will be accepted for lands where the Federal government owns the minerals within the the Piceance Basin Planning Area. Maps which indicate the areas open for expressions of interest may be obtained by contacting John Singlaub at the White River Resource Area Office at the address above. This call for expressions of interest is a step in the planning process which will lead to a Resource Management Plan which may consider site-specific tract analysis and will identify cumulative impacts of various alternatives.

This call for expressions of interest allows potential lessee's an opportunity to participate in the planning process by identifying mineral areas which could be considered for future sales of leases for oil shale deposits, as well as specific tracts for such leasing. It also allows citizens to identify specific areas which should not be considered for mineral leasing. The availability of this data will be an important factor in delineating the areas and tracts most likely to receive consideration for leasing. These areas may be of any size or configuration. Specific tracts identified in this call may not exceed 5,120 acres in size, however.

An expression of leasing interest is not an application. The size and/or location of a proposed area or tract may be modified or changed in the tract delineation or planning process if there is sufficient reason to do so. Areas and tracts may also be prioritized based upon the existence of resource conflicts. Examples of the types of concerns that may make such action necessary include: access needs, mining efficiency, future development potential, resource conservation, State preferences and environmental concerns.

Expressions of interest in oil shale must be submitted in writing. If more than one area or tract is nominated, the areas or tracts must be ranked by priority. The following information should be submitted:

1. Location—Delineations should be made on a map with a scale not less than 1/4 inch to the mile and an accompanying legal description if possible.

2. Extraction Technology—List the primary and alternative technological development preferences on a general basis (not a detailed plan). This should include the type of mine, techniques for mining, type of mineral separation, type of retorting, type of waste disposal.

3. Quality and Quantity—Estimates of the quality and quantity of the mineral resource(s) and economic value within the expression area.

4. Projected production and markets.

5. Transportation Needs—Include existing and proposed facilities (e.g., pipelines, roads).

6. Proposed water needs and source.

7. Proposed surface facilities.

8. Other pertinent information.

Data which is considered proprietary should not be submitted at this time.

For those wishing to identify areas that should not be leased, the following information should be included:

1. Location—Delineations should be made on a suitable map with a scale not less than 1/4 inch to the mile accompanied with a legal description if possible.

2. Reasons for not developing and/or leasing the area.

3. The kinds of mineral activity that should not occur (e.g. open pit mining, underground retorting, any surface disturbance, etc.).

4. Other pertinent information.

Expressions of interest will be accepted through July 11, 1983. Any information received after that date will be considered; however, inclusion of the data into the tract delineation and planning process cannot be assured. Other public participation activities will be conducted in accordance with 43 CFR part 1601. Dates, times and locations of these activities will be announced through local media and mailings to interested parties.

Documents relative to the tract delineation and planning process may be reviewed at the White River Resource Area Office during regular office hours.

Dated: April 28, 1983.

Lee Carie,

District Manager.

[FR Doc. 83-12163 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-84-M

Headwaters Resource Management Plan; Butte District, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft resource management plan/ environmental impact statement and public hearing.

SUMMARY: Pursuant to Section 202(f) of the Federal Land Policy and Management Act of 1976 and Section 102(c) of the National Environmental Policy Act of 1969, a draft resource

management plan/environmental impact statement (RMP/EIS) has been prepared for the Headwaters Resource Area. The RMP/EIS addresses future management options for approximately 311,337 surface acres and 655,505 acres of federal mineral estate administered by the Bureau of Land Management in west central Montana. The affected counties are Broadwater, Cascade, Gallatin, Jefferson, Lewis and Clark, Meagher, Park, Pondera, and Teton.

PUBLIC PARTICIPATION: Copies of the draft RMP/EIS are available from the Butte District Office, 106 N. Parkmont, P.O. Box 3388, Butte, MT 59702, phone (406) 494-5059. Public reading copies are available for review at the following locations:

Office of Public Affairs, Location Building, 18th and C Streets N.W., Washington, D.C. 20240

BLM, Montana State Office, Public Affairs Office, 222 N. 32nd Street, Billings, Montana 59107

BLM, Butte District Office, 106 N. Parkmont, Butte, Montana 59702

The draft RMP/EIS will be available for review from May 6, 1983, to August 5, 1983. However, written comments would be appreciated by July 8, 1983, and should be sent to: Project Manager, Headwaters RMP, Butte District Office, P.O. Box 3388, Butte, Montana 59702.

Oral or written comments also will be received at a formal public hearing to be held on Wednesday, June 15, 1983 from 3 p.m. to 5 p.m. and from 7 p.m. to 9 p.m. at Jorgenson's Holiday Motel, 1714 11th Avenue, Helena, Montana. In conjunction with this hearing, there will be an open house at Jorgenson's Holiday Motel on the same day as the hearing, running from 10 a.m. to 5 p.m. and from 6 p.m. to 8 p.m., to provide an opportunity for informal discussions with the resource specialists who participated in the development of the draft RMP/EIS. Oral and written comments concerning the adequacy of the draft RMP/EIS will be considered in the preparation of the final RMP/EIS for the Headwater Resource Area.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS analyzes four alternatives, with one representing a continuation of present management direction (no action). The others emphasize environmental protection, resource production, and an intermediate or balanced approach (preferred).

The plan focuses on resolving eleven resource management issues: oil and gas leasing and development; grazing allotment and riparian habitat management; wilderness study recommendations; forest management; land ownership adjustments; mineral

exploration and development; motorcycle use areas; motorized vehicle access; utility and transportation corridors; coal leasing; and special designations.

FOR FURTHER INFORMATION CONTACT:
Project Manager, Headwaters RMP,
(406) 494-5059.

Dated: April 19, 1983.

DeMiles R. Pedersen,
Acting State Director.

[FR Doc. 83-11347 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-84-M

[OR-36019, OR-36020]

Realty Action, Competitive/Modified Competitive Sale of Public Land; Lake County, Oregon

The following described parcels of land have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 STAT. 2750, 43 USC 1713) at no less than the appraised fair market value shown:

Parcel No.	Legal description	Acreage	Appraised value
1, OR-36019	T. 27 S., R. 17 E., Willamette Meridian, Oregon. Section 31: SE 1/4 NE 1/4, E 1/4 SE 1/4	120	\$47,500
	Section 32: S 1/4 NW 1/4	80	
	T. 28 S., R. 17 E., Willamette Meridian, Oregon. Section 6: Lot 1	37.46	
2, OR-36020	T. 28 S., R. 16 E., Willamette Meridian, Oregon. Section 11: SW 1/4 NW 1/4, NW 1/4 SW 1/4	237.46	22,400
		80	

The sale will be held on Wednesday, July 6, 1983, at 10:00 a.m., P.D.T., Bureau of Land Management Conference Room, 1000 South Ninth Street, Lakeview, Oregon.

The sale is consistent with publicly supported Bureau planning. The sale involves isolated land completely surrounded by private land, that is difficult and uneconomical to manage as part of the public lands, and is not suitable for management by another Federal department or agency. The public interest will be served by offering this land for sale.

Sale parcel #1, OR-36019, will be offered for sale at public auction through modified competitive bidding with Mr. Joe Oxenford given preference to meet the high selling bid. Refusal or failure by Mr. Oxenford to meet the high selling

bid immediately after the close of oral bidding shall constitute a waiver of such right.

Sale parcel #2, OR-36020, will be offered for sale at public auction through competitive bidding.

Modified competitive bidding procedures are being used to recognize the needs of adjoining landowners. Preference to meet the high selling bid is authorized under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713; CFR Part 2711.3-2(a)(2)).

Federal law requires that all bidders be U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property, or in the case of corporations, be authorized to own real estate in the state in which the sale land is offered. Proof of these requirements shall accompany all sale bids.

Sealed written bids will be considered only if received by the Bureau of Land Management, 1000 South Ninth Street, P.O. Box 151, Lakeview, Oregon 97630, prior to 9:00 a.m., Wednesday, July 6, 1983, P.D.T., and for at least the appraised value. A separate written bid must be submitted for each sale parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashiers check, made payable to the Bureau of Land Management for at least twenty percent (20%) of the amount bid and shall be enclosed in a sealed envelope clearly marked, "Bid for Public Land Sales OR-36019/OR-36020, Sale Parcel Number —, Lake County, Oregon, July 6, 1983". The written sealed bids will be opened and publicly declared at the beginning of each sale. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid, shall be by drawing.

In order to participate in the oral bidding on each parcel, bidders must submit a written bid for not less than the appraised value, and the twenty percent (20%) required deposit.

Oral bidding will be entertained after public declaration of the apparent high sealed bidder and all oral bids must be made in increments of \$50.00 or more. After oral bids are entertained, the apparent high qualifying oral bidder shall submit payment by cash, personal check, bank draft, money order or any combination thereof, any additional amount necessary to bring the amount tendered with their sealed bids up to twenty percent (20%) of the amount of the oral bid, immediately following the close of the sale.

In the exercise of the preference right, whether submitted by sealed bid or oral bid, the preference right holder shall be required to submit payment as stated above immediately following the close of the sale.

The terms and conditions applicable to the sale are:

1. The apparent high bidder shall submit the remainder of the full bid price within 30 days from the date of sale. Failure to submit the full bid price within 30 days from the date of sale shall result in sale cancellation of the specific parcel and the deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/her obligation and withdraw any tract from the sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consumption of the sale would encourage or promote speculation in public lands.

3. The patents will contain a reservation to the United States for ditches and canals.

4. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

5. The sale will be subject to all valid existing rights.

Those parcels not sold pursuant to this Notice of Realty Action shall remain available for sale on a continuing basis until sold. The sale price shall be based on the appraised fair market value at the time of purchase. Subsequent purchases may be transacted at the Lakeview District Office, in person, during regular business hours (7:45 a.m. to 4:30 p.m.)

Detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Lakeview District Office, Bureau of Land Management, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Lakeview District Office, Bureau of Land Management, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. Any adverse comments received as a result of the Notice of Realty Action or notification to the congressional committees and delegations pursuant to Pub. L. 97-394, will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this

realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of any changes.

Dated: April 27, 1983.

Richard A. Gerity,

District Manager.

[FR Doc. 83-12181 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-84-M

[U-52910]

Utah; Invitation To Participate in Coal Exploration Program—Getty Minerals Company

Getty Minerals Company is inviting all qualified parties to participate in a program for the exploration of coal reserves in the Muddy Creek area about four miles northwest of Emery County, Utah. The lands are located in Sevier and Emery Counties, Utah and are described as follows:

T. 21 S., R. 5 E., SLM, Utah

Secs. 2, and 9-16, all;

Sec. 17, S $\frac{1}{2}$;

Secs. 20-25, all;

Sec. 26, E $\frac{1}{2}$;

Sec. 27, all;

Sec. 28, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 29, E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 33, lots 2-4, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$,

NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 34, all.

T. 21 S., R. 6 E., SLM, Utah

Sec. 17, W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 18, lots 1-4, E $\frac{1}{2}$ E $\frac{1}{2}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$,

SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 19, lots 1-4, W $\frac{1}{2}$ E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$,

E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 20, SW $\frac{1}{4}$;

Sec. 29, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 30, lots 1-4, NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$,

SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 14,400.48 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111 and to Mark L. Adkins, Getty Minerals Company, 5250 South 300 West, Salt Lake City, Utah 84107. Such written notice must be received within 30 days after the publication of this notice in the *Federal Register*.

Any party wishing to participate in the exploration program must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Getty Minerals Company is available for public review during normal business hours, in the following office, under Serial Number U-52910: Bureau of Land Management, Room 1400, University

Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

W. R. Papworth,

Deputy State Director, Operations.

[FR Doc. 83-12184 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-84-M

Office of the Secretary

Idaho; Amendment of Wilderness Inventory Decisions

AGENCY: Office of the Secretary, Interior.

ACTION: Amendment of Wilderness Inventory Decisions.

SUMMARY: This notice announces that lands within 2 former wilderness study areas, totaling 7,885 acres, have been placed under protective management as a result of land-use planning decisions of the Bureau of Land Management, or are under consideration for such designation.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706, telephone (208) 334-1748.

Amendment of Wilderness Inventory Decisions

This notice completes the action necessary with respect to Bureau of Land Management wilderness study areas in Idaho to bring the Bureau's wilderness review into compliance with recent decisions of the Interior Board of Land Appeals. Previous action on this subject was published in the *Federal Register* on December 30, 1982 (47 FR 58372).

Section 1. Protective Management

Two areas, totaling 7,885 acres, have been placed under protective management as a result of land/use planning decisions pursuant to Section 202 of the Federal Land Policy and Management Act of 1976, or are under consideration for such designation. These areas were formerly identified as wilderness study areas (WSA) under Section 603 of the Act. They were deleted from that category on December 30, 1982. The areas are:

Little Wood River (ID-53-4), 4,385 acres, Blaine County. All of this former wilderness study area, plus additional public lands, has been established as the Elk Mountain Area of Critical Environmental Concern.

Lower Salmon Falls Creek (ID-17-10), 3,500 acres, Twin Falls County. Approximately half of this former wilderness study area, plus additional

public lands, has been established as the Salmon Falls Creek Outstanding Natural Area. The remainder of the wilderness study area is under consideration for addition to this Outstanding Natural Area.

Section 2. Management of Deleted Lands

All lands in Idaho deleted from wilderness study status by the decision issued on December 30, 1982 (47 FR 58372), are hereby released from management restrictions to protect their wilderness suitability. Of these lands, 7,885 acres have been placed under protective management or under consideration for protective management, as described in Section 1 of this decision, and will be managed to protect the identified natural, scenic, and cultural values. The remaining 13,860 acres will be managed for the full range of multiple uses other than wilderness and in conformance with existing land use plans and regulations for those areas.

This is a final decision of the Department of the Interior and is not subject to appeal under 43 CFR Part 4.

Dated: May 2, 1983.

Garrey E. Carruthers,
Assistant Secretary.

TABLE 1.—AREAS PLACED UNDER PROTECTIVE MANAGEMENT

Area name	No.	Acreage	County	Category
Little Wood River	ID-53-4	4,385	Blinne	ACEC ¹
Lower Salmon Falls Creek	ID-17-10	3,500	Twin Falls	ONA ²
Total (2 areas)		7,885		

¹ All of the former Little Wood River wilderness study area, plus additional public lands, has been established as the Elk Mountain Area of Critical Environmental Concern, totaling approximately 8,000 acres.

² Portions of the remaining former Lower Salmon Falls Creek wilderness study area, plus other public lands, totaling approximately 3,800 acres, are under consideration for addition to this Outstanding Natural Area.

[FR Doc. 83-12211 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Amendment of Wilderness Inventory Decisions

AGENCY: Office of the Secretary, Interior.

ACTION: Amendment of wilderness inventory decisions.

SUMMARY: This notice designates 1 area totaling 4,002 acres for wilderness consideration pursuant to Section 202 of the Federal Land Policy and Management Act of 1976. This notice also amends previous wilderness

inventory decisions by the Bureau of Land Management for lands in Wyoming, deleting parts of 13 wilderness study areas. The total area deleted from wilderness study area status under Section 603 of the Act is 10,026 acres.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Wyoming State Director, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001, telephone (307) 772-2073.

Amendment of Wilderness Inventory Decisions

This notice completes the action necessary with respect to Bureau of Land Management wilderness study areas in Wyoming to bring the Bureau's wilderness review into compliance with recent decisions of the Interior Board of Land Appeals. Previous action on this subject was published in the Federal Register on December 30, 1982 (47 FR 58372).

Section 1. Consideration for Protective Management

The Whitehorse Creek area (WY-040-325) of 4,002 acres in Fremont County has been designated for wilderness consideration pursuant to Section 202 of the Federal Land Policy and Management Act of 1976. This area was formerly identified as a wilderness study area under Section 603 of the Act. It was deleted from that category on December 30, 1982.

Section 2. Split-Estate Lands

A. "Split-estate" lands are lands where the Federal Government owns the surface but where the subsurface mineral estate is nonfederally owned. Split-estate lands were improperly

identified for wilderness study under Section 603 of the Federal Land Policy and Management Act of 1976; that error is corrected by this decision.

B. Boundaries and acreages of the wilderness study areas listed in Table 1 are modified, effective upon publication of this decision in the Federal Register, to delete split-estate lands. The deleted lands consist of: (1) Scattered tracts of split estate located within wilderness study areas and (2) tracts of split-estate located on the periphery of wilderness study areas. Only the indicated acreage is deleted from wilderness study. The remainder of the wilderness study area remains under wilderness study, and the boundary change does not affect the Bureau of Land Management's previously adopted conclusions as to the presence of wilderness characteristics in the remaining wilderness study area.

Section 3. Management of Deleted Lands

All lands in Wyoming deleted from wilderness study status by this decision in Table 1 and by the decision issued on December 30, 1982 (47 FR 58372) and not designated for further wilderness consideration in Section 1 of this notice are hereby released from management restrictions to protect their wilderness suitability. Such lands, totaling 26,393 acres, will be managed for the full range of multiple uses other than wilderness and in conformance with existing land use plans and regulations for those areas.

This is a final decision of the Department of the Interior and is not subject to appeal under 43 CFR Part 4.

Garrey E. Carruthers,
Assistant Secretary.

May 2, 1983.

TABLE 1.—MODIFIED WILDERNESS STUDY AREAS—BOUNDARY CHANGED TO DELETE SPLIT ESTATE

Wilderness study area name	No.	Old wilderness study area acreage	Acres split estate	Revised wilderness study area acreage	County
Sheep Mountain	WY-010-130	23,250	1,040	22,210	Big Horn
Red Butte	WY-010-131	11,350	440	10,910	Do
Honeycombs	WY-010-221	21,000	260	20,740	Washakie
McClough Peaks	WY-010-335	25,210	640	24,570	Park
Sweetwater Rocks	WY-030-120	6,316	360	5,956	Fremont
Sweetwater Rocks	WY-030-122	12,789	40	12,749	Do
Adobe Town	WY-030-401	33,000	1,560	31,440	Sweetwater
Adobe Town	WY-040-408	52,710	2,279	50,431	Do
Subtotal		85,710	3,839	81,871	
Lake Mountain	WY-040-110	13,970	105	13,865	Sublette
Sand Dunes	WY-040-307	27,200	891	26,509	Sweetwater
South Pinnacles	WY-040-313	10,826	26	10,800	Do
Honeycomb Buttes	WY-040-323	41,620	870	40,750	Sweetwater/Fremont
Devils Playground/Twin Buttes	WY-040-401/402	24,276	1,715	22,561	Sweetwater
Total (13 areas)			10,026		

[FR Doc. 83-12212 Filed 5-5-83; 8:45 am]
BILLING CODE 4310-10-M

Minerals Management Service

Withdrawal of 1983 Sale Offerings to Eligible U.S. Refiners of Royalty Oil Available From Federal Offshore and Onshore Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Withdrawal of Notice of 3 Sale Offerings of Available Royalty Oil.

SUMMARY: This document withdraws at this time 3 sale offerings announced on April 28, 1983 (48 FR 19000), by the Secretary of the Interior.

DATE: Withdrawal of the 3 sale offerings is effective today, May 6, 1983.

FOR FURTHER INFORMATION CONTACT: RIK Sale Coordinator Dennis Whitcomb (303) 231-3432, or Anthony Gallagher, Chief of Accounting, Policy, and Regulatory Analysis (703) 860-7311.

SUPPLEMENTARY INFORMATION: Royalty Oil Sales No. 83-1, 83-2, and 83-3 will not be held respectively on July 6, August 3, and September 7, 1983, as advertised by the Secretary of the Interior. Requests for applications or applications already made will be returned to the senders by MMS immediately and will not be processed at this time.

Orie L. Kelm,

Deputy Associate Director for Royalty Management, Minerals Management Service.

[FR Doc. 83-12375 Filed 5-5-83; 9:25 am]
BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-133]

Certain Vertical Milling Machines and Parts, Attachments and Accessories Thereto; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Kanematsu-Gosho (USA) Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's Rules, the presiding

officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 3, 1983.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: May 3, 1983.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-12220 Filed 5-5-83; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-128]

Certain Cupric Hydroxide Formulated Fungicides and Cupric Hydroxide Preparations Used in the Formulation Thereof; Commission Decision Not To Review Initial Determination

Correction

In FR Doc. 83-11255 beginning on page 19086 in the issue of Wednesday, April 27, 1983, make the following correction:

In the heading at the beginning of the document, "Investigation No. 337-TA-

128" was omitted and should be inserted as set forth above.

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercompany 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 intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Linbeck Corporation, 3810 West Alabama, Houston, Texas 77027.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

(i) Linbeck Construction Corporation, Texas;

(ii) P & L Equipment Company, Inc., Texas;

(iii) Urban Construction Company, Texas;

(iv) Helena, Inc., Texas;

(v) Lucia, Inc., Texas; and

(vi) Marie, Inc., Texas.

1. Parent Corporation: Sage Foods, Inc., 999 East Touhy, Suite 260, Des Plaines, IL 60018.

2. Wholly-owned Subsidiaries:

(i) Infra-Red (Illinois corporation);

(ii) Practical Packaging Unlimited (California corporation).

The following list of divisions is to be added to the previous CIH notice of the parent corporation Archer Daniels Midland Company, 4666 Faries Parkway, Decatur, IL 62525. That notice was published on April 22, 1983, at 48 FR 17408.

3. Divisions of the parent corporation or of above-named subsidiaries which are same as the above but operate under a separate name only, for commercial reasons:

(1) Cross & Murrey & Co., 710 3rd Avenue NW., Minneapolis, Minnesota;

(2) L. W. Roach & Co., 1356 Chattahoochee Avenue NW., Atlanta, Georgia;

(3) Trans-Sweet, Lakeville, New York;

(4) Paris Milling Company, 1392 S. Main, Parks, Texas;

(5) Massey & Fair, 818 Ashby Street NW., Atlanta, Georgia;

(6) Southern Cotton Oil Co., 4666 Faries Parkway, Decatur, Illinois;

(7) ADM Foods, 4666 Faries Parkway, Decatur, Illinois;

- (8) New Era Milling, P.O. Box 958, Arkansas City, Kansas;
- (9) Interstate Milling Company, P.O. Box 31155, Charlotte, North Carolina;
- (10) Econo-Flo Flour, 4550 W. 109th St., Shawnee Mission, Kansas;
- (11) Inland Mills, P.O. Box 1357, Des Moines, Iowa;
- (12) Gooch Mill & Elevator, Box 81308, Lincoln, Nebraska;
- (13) Fuhrer-Ford Mill, P.O. Box 788, Mt. Vernon, Indiana;
- (14) Western Star Mill, P.O. Box 1308, Salina, Kansas;
- (15) ADM Processing, 4666 Faries Parkway, Decatur, Illinois;
- (16) Lubbock Cotton Oil Co., P.O. Box 2788, Lubbock, Texas;
- (17) Quanah Cotton Oil Co., P.O. Box 180, Quanah, Texas;
- (18) Sweetwater Cotton Oil Co., P.O. Box 420, Sweetwater, Texas;
- (19) Coeval, Inc., Highway 150, St. Joseph, Illinois;
- (20) Centennial Mills, P.O. Box 3773, Portland, Oregon;
- (21) Clinton Corn, Clinton, Iowa;
- (22) Corn Sweeteners, P.O. Box 1445, Cedar Rapids, Iowa;
- (23) ADM Grain Co., P.O. Box 15166, Commerce Station, Minneapolis, Minnesota;
- (24) Smoot Grain Co., P.O. Box 1521, Hutchinson, Kansas;
- (25) Golden Grains and Feeds, Box 595, Monroe, North Carolina;
- (26) H. Dittlinger Roller Mills, 398 E. San Antonio Street, New Braunfels, Texas; and
- (27) Western New York Syrup Corp., 3401 Rochester Road, Lakeville, New York.
- Agatha L. Mergenovich,
Secretary.
- [FR Doc. 83-12146 Filed 5-5-83; 8:45 am]
BILLING CODE 7035-01-M

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for

filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

Agatha L. Mergenovich,
Secretary.

For the following, please direct status calls to Team 2 at 202-275-7030.

Volume No. OP2-201

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-81316. By decision of April 28, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 3, approved the transfer to Cromartie Transport Company, Inc., Wilmington, NC, of a portion of the authority issued to Wendell Transport Corporation, Wendell, NC, in MC-114562 Subs 5, 6, and 9, authorizing (1) blackstrap molasses, in bulk, in tank vehicles, from Canal Point, Belle Glade, points in Palm Beach County, FL, and points within that part of Hendry County, FL, on and east of FL Hwy 833 to points in NC and SC, (2) molasses, in bulk, in tank vehicles, from Wilmington, NC, to points in SC, and (3) molasses and mixtures of molasses and feed supplements, in bulk, in tank vehicles, from Wilmington, NC, to points in VA. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602.

Volume No. OP2-202

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC-FC-81349. By decision of April 29, 1983, issued under 49 U.S.C. 10926 and the transfer rules of 49 CFR 1181, Review Board Number 1, approved the transfer to DAVID & CHRISTINE

HOCKIN, d.b.a. A. & A. BERGMAN, Caseville, MI, of Certificate No. MC-146963F, and Permit Nos. MC-110981 and Sub-No. 8, issued November 12, 1980, November 22, 1971, and September 21, 1977, respectively, to ALFRED BERGMAN AND LOIS BERGMAN, d.b.a. A. & A. BERGMAN, Caseville, MI, authorizing (1) soybean meal, in bulk, from the facilities of Cargill, Inc., at or near Sidney, OH, to points in MI, restricted to traffic originating at the named origin facilities; and (2) sweet cream, plain and sweetened condensed whole milk, cottage cheese, butter, and animal feed, from specified points in MI, to specified points in OH and WV; (3) empty containers, from specified points in OH, and WV, to specified points in MI; (4) beans, from points in a described area of MI, to specified points in KY, WV, points in a described area of IA and MO, and points in IL, IN, and OH; (5) feed, from Chicago, IL, to points in a described area of MI; (6) fence materials, from Sterling, IL, to points in a described area of MI; (7) soybean meal, from Decatur, IN, and Fosteria, OH, to points in a described area of MI, and from Frankfort and Loganport, IN, to points in MI, under continuing contract(s) in (2) through (7) above with Farm Bureau Services, Inc., of Lansing, MI. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684 for transferee and transferor.

For the following, please direct status calls to Team 4 at 202-275-7669.

Volume No. OP4-FC-262

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC-FC-81416, filed April 22, 1983. By decision of March 29, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 2 approved the transfer to Kathryn A. Dunlap, of Fairfield, OH, of Certificates No. MC-13777 Subs 8, 9, 10X (including the underlying authority in MC-13777 Lead and Subs 4, 5, 6, and 7), and 11, issued January 28, 1981, August 5, 1981, July 22, 1981, and November 7, 1981, respectively, to AAA Transportation, Inc., of Indianapolis, IN, authorizing the transportation of: in Sub. 8, machinery, equipment, materials and supplies used in connection with the production, construction, operation, repair, service, maintenance, dismantling and transmission of air, water, and sewage systems or installations, between those points in the U.S. in and east of MN, IA, MO, AR, and TX, restricted to traffic originating at or destined to the facilities of the The Clow Corp; Sub 9, (1) building materials, and (2) forest products and

lumber and wood products, between those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX; *Sub 10X*, (1) *building materials*, (a) between Hamilton County, OH, on the one hand, and, on the other, points in Louisville, KY, St. Louis, MO, and points in IL and IN, and (b) between points in Lawrence County, IL, on the one hand, and, on the other, points in IN, (2) *waste or scrap materials not identified by industry producing*, between points in Indianapolis, IN, on the one hand, and, on the other, points in OH, (3) *metal products and materials, equipment and supplies*, used in the manufacture and distribution thereof, between points in Butler County, OH, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, OK, SC, TN, TX, VA, WV, and WI, (4) *building materials, materials, equipment, and supplies*, used in the manufacture, distribution and installation thereof, (a) between points in Warren County, OH, on the one hand, and, on the other, points in GA, IL, IN, IA, KY, MI, MO, and TX, (b) between points in Henry County, GA, on the one hand, and on the other, points in KY, MO, OH, and TN, and (c) between Chicago, IL, and points in Warren County, OH, and Jefferson County, KY, on the one hand, and, on the other, points in GA, IL, IN, IA, KY, MI, MO, OH, and TN, and (5) *building materials*, between points in Butler County, OH, on the one hand, and, on the other, points in the U.S.; and *Sub 11 metal products*, between points in OH, on the one hand, and, on the other, points in the U.S. Representative: James R. Stivers, 1396 W. 5th Ave., P.O. Box 12241, Columbus, OH 43212, (614) 481-8821.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-FC-197

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC-FC-81379. By decision of April 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to A-C TRUCK SERVICE, INC., of Great Bend, KS, of Certificate No. MC-158939 issued August 19, 1982 to H.L. KELLY TRUCKING of Great Bend, KS authorizing the transportation of *oil field machinery*, between points in KS, AZ, CA, CO, LA, MT, NE, NM, OK, TX, and WY. Representative: Eugene W. Hiatt, 827 S. Topeka Ave., Topeka, KS 66603.

[FR Doc. 83-12151 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OPY-2-206]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following operating rights applications are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by the Commission's General Rules of Practice (49 CFR 1160).

Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems), we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically 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 protests in the form of verified statements as to the finance application or to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems), upon compliance with certain requirements which will be set forth in a notification of effectiveness of this

decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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.

Decided May 3, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

Agatha L. Mergenovich,
Secretary.

MC 167162, filed March 30, 1983. Applicant: E & M EXPRESS, INC., 110 North St. Andrews Dr., Ormond Beach, FL 32074. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, DC 20005, 202-296-3555. 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 Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., of Elmira, NY.

Note.—This application is directly related to MC-F-15147, published in the Federal Register this issue.

[FR Doc. 83-12146 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the Federal Register on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the Federal Register December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are

governed by Subpart D of 49 CFR Part 1160, published in the Federal Register on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier; motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days

from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the 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 4 at (202) 275-7669.

Volume No. OP4-260

Decided: April 29, 1983.

By the Commission, Review Board No. 2, members Carleton, Williams, and Ewing.

MC-112076 Sub-12, filed April 25, 1983. Applicant: THOMAS J. PECK & SONS, INC., 415 S. 600 E.—RD 4A, Lehi, UT 84043. Representative: Harry D. Pugaley, 940 Donner Way #370, Salt Lake City, UT 84108 (801) 581-0322. Transporting *petroleum products*, between points in Carbon County, WY, on the one hand, and, on the other, points in UT, under continuing contract(s) with Concrete Products Company, of Salt Lake City, UT.

MC-135887 Sub-4, filed April 19, 1983. Applicant: VOYNE E. GLEASON, P.O. Box 1051, Hayden Lake, ID 83835. Representative: Michael D. Duppenhauer, 211 S. Washington St., Seattle, WA 98104 (206) 622-3220. Transporting *food and related products*, between points in ID, OR, CA, and WA.

MC-147216 Sub-8, filed April 19, 1983. Applicant: CARL KLEMM, INC., d.b.a., KLEMM TANK LINES, 1126 Terry Lane, DePere, WI 54415. Representative: Robert M. O'Donnell, 145 W. Wisconsin

Ave., Neenah, WI 54956 (414) 722-2848. Transporting *petroleum and petroleum products*, between points in IL, IA, and WI.

MC-149157 Sub-11, filed April 25, 1983. Applicant: STYLE CRAFT TRANSPORT, INC., Hwy 71 S., Milford, IA 51351. Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502 (712) 323-9124. Transporting *furniture and fixtures*, between points in the U.S. (except AK and HI), under continuing contract(s) with J.C. Leather Corporation, of Sioux Falls, SD.

MC-150136 Sub-6, filed April 19, 1983. Applicant: JOE SICILIA, INC., N. 5523 Julia, Spokane WA 99207. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009 (206) 453-0312. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S.

MC-154876, filed April 25, 1983. Applicant: CAL-WESTERN TRANSPORT, INC., P.O. Box 898, Tulare, CA 93275. Representative: B. J. Sparlin (same address as applicant) (209) 688-0591. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of food and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with Archer Daniels Midland Company, of Decatur, IL, and Richard Allmon Company, of Glendale, CA.

MC-158416 (Sub-1), filed April 22, 1983. Applicant: B & C TRUCKING, INC., 2425 Durby, Memphis, TN 38114. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103 (901) 526-4114. Transporting (1) *such commodities* are dealt in or used by hotel and motel furnishings and equipment suppliers, between points in the U.S. (except AK and HI), and (2) *furniture and fixtures*, between points in MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC-161107 (Sub-3), filed April 18, 1983. Applicant: MILBANK FREIGHTWAYS, P.O. Box 9485, Minneapolis, MN 55440. Representative: Richard L. Gill, 1805 American National Bank Bldg., St. Paul, MN 55101 (612) 224-9454. (A) Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Minneapolis, MN and Denver, CO, from Minneapolis over Interstate Hwy 35 to Des Moines, IA, then over Interstate Hwy 80 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Denver, CO, and return over the same route, serving all intermediate

points, and (B) over irregular routes, transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MN, WI, ND, SD, IL, and IA.

MC-161647 (Sub-1), filed April 19, 1983. Applicant: CORE, LTD., 1882 Ridge Rd., No. Haven, CT 06473. 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 Westvaco Corporation of New York, NY.

MC-164726, (Sub-2), filed April 19, 1983. Applicant: C & D VAN HORN, INC., Box 93, Valley St., Delaware, NJ 07833. Representative: Raymond Talipski, 121 S Main St., Taylor, PA 18517 (717) 344-8030. Transporting *citrus juice concentrate*, between points in Orange, Polk, Manatee, Pasco, Indian River, St. Lucie, Lake, Desoto, Hendry and Highlands Counties, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166716, filed April 25, 1983. Applicant: TITAN TRANSPORTATION, INC., 746 N. Texas St., Fairfield, CA 94533. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111 (415) 988-1414. 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 Capel Klang Company, of Stockton, CA.

MC 166917, filed April 21, 1983. Applicant: GARY HOFF & DALE HOFF, d.b.a. HOFF BROTHERS, Route 3, Perryville, MO 63775. Representative: Herman W. Huber, 101 E. High St., Jefferson City, MO 65101 (314) 636-9131. Transporting *commodities in bulk*, between points in AR, IL, KY, MS, MO and TN.

MC 167437, filed April 19, 1983. Applicant: B.R. MCGREE, d.b.a. SFI TRUCKING COMPANY, Rte. 1, Box 280PZ, Kilgore, TX 75662. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103 (817) 332-4718. Transporting *Mercer commodities*, between points in the U.S. (except AK and HI), under continuing contract(s) with Southern Forge, Inc. of Longview, TX.

MC 167566, filed April 21, 1983. Applicant: CECIL SANFORD, d.b.a. SNS EXPRESS, Route 8, Powerdam Rd., Defiance, OH 43512. Representative:

Cecil Sanford (same address as applicant) (419) 393-2061. Transporting *food and related products*, between points in U.S. (except AK and HI).

MC 167567, filed April 21, 1983. Applicant: SMITH & SCHARTNER, INC., Route 2, Sturgeon Bay, WI 54235. Representative: Robert M. O'Donnell, 145 W. Wisconsin Ave., Neenah, WI 54956 (414) 722-2848. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Door County, WI, on the one hand, and, on the other, St. Louis, MO and points in IL, IN, IA, and MN.

MC 167576, filed April 22, 1983. Applicant: D. M. MITCHELL TRANSPORT CO., 3501 Wyoming Ave., Dearborn, MI 48120. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685-0801 (616) 941-5313. Transporting *petroleum, natural gas and their products*, between points in MI, IN, OH, PA, WV and KY.

For the following, please direct status calls to Team 1 at 202-275-7992.

Volume No. OP1-159

Decided: April 29, 1983.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

MC 6461 (Sub-28), filed April 21, 1983. Applicant: B-LINE TRANSPORT CO., INC., E 7100 Broadway, Spokane, WA 99206. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave. Portland, OR 97210 (503) 226-3755. 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 Superior Transporting Systems, Inc., of Wilsonville, OR.

MC 67450 (Sub-119), filed April 22, 1983. Applicant: PETERLINE CARTAGE CO., a Corporation, 9651 South Ewing Avenue, Chicago IL 60617. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603 (312) 263-2306. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (Except AK and HI).

MC 114840 (Sub-18(A)), filed April 19, 1983. Applicant: EBY BROS., INC., P.O. Box 9342, Boise, ID 83707. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701 (208) 343-3071. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Note.—Applicant has also filed for authority under the non-fitness procedures

docketed MC-114840 Sub-18(B), published in this same Federal Register issue.

MC 114840 (Sub-18(B)), filed April 19, 1983. Applicant: EBY BROS. INC., P.O. Box 9342, Boise, ID 83707. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701 (208) 343-3071. Transporting *general commodities* (except classes A and B explosives and household goods), between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY.

Note.—Applicant has also filed for authority under the fitness procedures docketed MC-114840 Sub-18(A), published in this same Federal Register issue.

MC 126320 (Sub-20), filed April 15, 1983. Applicant: DETTINBURN TRUCKING, INC., Route 3, Box 24, Petersburg, WV 26847. Representative: Daniel B. Johnson, 4304 East-West Highway, Bethesda, MD 20814 (301) 654-2240. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 148181 (Sub-4), filed April 21, 1983. Applicant: SALEM TRUCKING CO., R. D. No. 1, Franklin, ME 04834. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110 (215) 561-1030. Transporting *building materials*, between points in Bucks County, PA, and Westchester County, NY, on the one hand, and, on the other, points in MA, ME and NH.

MC 154621 (Sub-5), filed April 22, 1983. Applicant: MONROE WAREHOUSE COMPANY, INC., P.O. Box 2525, Monroe, LA 71207. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205 (601) 948-8820. 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 Manville Corporation and its subsidiaries, of West Monroe, LA.

MC 166581, filed March 1, 1983, and previously noticed in Federal Register issue of March 24, 1983. Applicant: WABER TRANSPORT, INC., 20 Enterprise Ave., Secaucus, NJ 07094. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934 (201) 234-0301. Transporting *such commodities as are dealt in or used by retail department stores and discount houses*, between Secaucus, NJ, and points in Mecklenburg County, NC, on the one hand, and, on the other, points in TX, AZ, CA, UT, OR, WA and CO.

Note.—This republication clarifies the territorial description.

MC 167370, filed April 15, 1983. Applicant: ROGER CONLEY d.b.a. R.C.

TRUCKING, 1550 E. Riverview, Orange, CA 92665. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702 (714) 998-5412. Transporting *materials, equipment and supplies* used in hospitals, between points in the U.S. (except AK and HI), under continuing contract(s) with American Hospital Supply, Inc., of Irvine, CA.

MC 167470, filed April 18, 1983. Applicant: SPECIALTY TRANSPORTATION, INC., P.O. Box 24160, Houston, TX 77229-4160. Representative: David L. Taylor (same address as applicant) (713) 455-1105. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI).

MC 167491, filed April 18, 1983. Applicant: GENE'S HOT SHOT SERVICE, INC., Route 4, Box 223, Sayre, OK 73662. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154 (405) 424-3301. Transporting *Mercer commodities*, between points in AL, AR, CA, CO, KS, LA, MS, ND, NM, OK, TX, UT and WY.

MC 167530, filed April 19, 1983. Applicant: TRANSPORTATION CONSOLIDATORS, INC., 14003 S. E. 134th St., Renton, WA 98055. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055 (206) 235-1111. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI).

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-206

Decided: April 26, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 79658 (Sub-67), filed April 18, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (Same address as applicant), 812-424-2222. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Aetna Life & Casualty of Hartford, CT.

MC 79658 (Sub-68), filed April 18, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (Same address as applicant), 812-424-2222. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with A. M. Castle & Company of Franklin Park, IL.

MC 108119 (Sub-289), filed April 15, 1983. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, Saint Paul, MN 55164. Representative: Clellan G. Ahrens, P.O. Box 43010, Saint Paul, MN 55164 (612) 454-5750, Ext. 226. Transporting *lumber and wood products*, between points in the U.S., under continuing contract(s) with Hampton Lumber Sales Company, of Portland, OR.

MC 119388 (Sub-21), filed April 18, 1983. Applicant: GLEN R. ELLIS, INC., 3911 Jerome Ave., Chattanooga, TN 37407. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, 202-347-8862. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of malt beverages, between those points in the U.S. in and east of TX, OK, KS, NE, ND and SD.

MC 123269 (Sub-5), filed April 18, 1983. Applicant: NORMAN LINES, INC., 765 East California Ave., Dolton, IL 60419. Representative: Patrick H. Smyth, 105 West Madison St., Suite 1008, Chicago, IL 60602, (312) 283-2397. Transporting *food and related products and such commodities* as are used by meat packers, between points in the U.S. (except AK and HI).

MC 129948 (Sub-3A), filed April 15, 1983. Applicant: WHITE PINE TRANSIT CO., INC., 400 E. Leonard St., P.O. Box 681, Ironwood, MI 49938. Representative: Robert J. Brooks, 1828 L St., N.W., Suite 1111, Washington, DC 20036, 202-466-3892. Transporting *passengers* in charter and special operations, in interstate, intrastate and foreign commerce over regular routes: (a) between Ashland, WI and Calumet, MI: From Ashland over U.S. Hwy 2 to junction MI Hwy 28, then over MI Hwy 28 to junction MI Hwy 64, then over MI Hwy 64 to junction U.S. Hwy 45, then over U.S. Hwy 45 to junction MI Hwy 26, then over MI Hwy 26 to junction MI Hwy 203, then over MI Hwy 203 to Calumet, and return over the same route serving all intermediate points and the off-route points of Ramsay, MI and mining sites near White Pine and Hancock, MI; (b) Between Calumet, MI and Marquette, MI over U.S. Hwy 41, serving all intermediate points and the off-route points of various mining sites near Hancock, Negaunee and Ishpeming, MI; (c) Between Calumet, MI and Houghton, MI over MI Hwy 26, serving all intermediate points; (d) Between Ontonagon, MI and Baraga, MI over MI Hwy 38, serving all intermediate points; (e) Between Palmer, MI and junction MI Hwy 35 and U.S. Hwy 41, near Negaunee, MI over MI Hwy 35, serving all intermediate points and the off-route

mining sites near Palmer; (f) Between Mercer, WI and junction U.S. Hwy 51 and U.S. Hwy 2, near Hurley, WI over U.S. Hwy 51, serving all intermediate points; (g) Between Iron Belt, WI and Ironwood, MI: From Iron Belt over WI Hwy 77 to junction U.S. Hwy 51, then over U.S. Hwy 51 to junction U.S. Hwy 2, then over U.S. Hwy 2 to Ironwood, serving all intermediate points.

Note.—(1) Applicant intends to tack these routes with each other and with its existing authority; (2) Applicant seeks to provide regular-route service in interstate and foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B).

Note.—Applicant also seeks authority in MC-129948 (Sub-3B) published in the same issue.

MC 159519 (Sub-1), filed April 18, 1983. Applicant: R.W. JOYCE TRUCKING CO., P.O. Box 1201, 237 Starlite Road, Mt. Airy, NC 27030. Representative: Joseph L. Steinfeld, Jr., 915 Pennsylvania Building, 425 13th Street, N.W., Washington, DC 20004, (202) 737-030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NY, NJ, PA, DE, MD, VA, WV, OH, NC, SC, GA, FL, TX, AZ, NV, CA, OR, WA, and DC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 167298, filed April 7, 1983. Applicant: L & R DISTRIBUTORS, 10031 Royal Oak Rd., Cedarburg, WI 53012. Representative: Loren E. Phalin (same address as applicant), 414-377-7422. Transporting *machinery*, between Milwaukee, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 167458, filed April 15, 1983. Applicant: TROPHY TRANSPORTATION, INC., 13443 S. E. Wiese Rd., Boring, OR 97009. Representative: Alan Meyer (same address as applicant), (503) 658-6960. Transporting *General commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, AR, CA, CO, ID, NM, NV, OK, OR, TX, UT, WA, and WY.

Volume No. OP5-204

Decided: April 25, 1983.

By the Commission, Review Board No. 3, members Krock, Joyce, and Dowell.

FF 589 (Sub-2), filed April 14, 1983. Applicant: GOLDEN COAST FORWARDING LTD., 3600 S. Western Ave., Chicago, IL 60609. Representative: H. Barney Firestone, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601, (312)

263-1600. As a *freight forwarder*, in connection with the transportation of *general commodities* (except classes A and B explosives, commodities in bulk, motor vehicles, used household goods, and unaccompanied baggage), between points in the U.S.

MC 94648 (Sub-2), filed March 22, 1983. Applicant: ERNEST A. PLANTE, d.b.a., ERNEST A. PLANTE MOVERS, 70 Bridgman St., Providence, RI 02907. Representative: Ernest A. Plante (same address as applicant), 401-331-0426. Transporting *household goods, furniture and fixtures*, between points in AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SE, TN, TX, VT, VA, WV, WI, and DC.

MC 128878 (Sub-50), filed April 14, 1983. Applicant: SERVICE TRUCK LINE, INC., 1400 Alpine, P.O. Box 5518, Bossier City, LA 71111. Representative: C. Wade Shemwell (same address as applicant), (318) 747-4300. Transporting *lumber, wood products, forest products, and building materials*, between points in the U.S., under continuing contract(s) with Manville Forest Products Corporation, of West Monroe, LA.

MC 151989 (Sub-3), filed April 14, 1983. Applicant: TODD TRANSPORTATION COMPANY, 421 Garrard Street, Covington, KY 41011. Representative: Stephen D. Strauss, 2510 Carew Tower, Cincinnati, OH 45202, (513) 621-4607. Transporting *cranes and construction equipment*, between points in the U.S., under continuing contract(s) with Carlisle Construction Co., Inc., of Newport, KY.

MC 157278 (Sub-1), filed March 29, 1983. Applicant: FARM TRANSPORT CO., 1685 K St., Gering, NE 69341. Representative: Philip M. Kelly, 105 East 16th St., Scottsbluff, NE 69361, (308) 632-7191. Transporting *general commodities* (except classes A and B explosives and household goods), between points in CA, CO, NE, SD, TX, and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164208 (Sub-1), filed April 15, 1983. Applicant: CANOGA TRANSPORTATION CO., INC., R.D. No. 2, Box 2453, Seneca Falls, NY 13148. Representative: Roy D. Pinsky, Suite 1020, State Tower Bldg., Syracuse, NY 13202, (315) 422-2384. Transporting *general commodities* (except classes A and B explosives and household goods), between points in ME, VT, NH, MA, CT, RI, NY, PA, MD, NJ, VA, WV, NC, SC, MI, IN, OH, IL, TN, KY, and MO.

MC 165159 (Sub-1), filed April 4, 1983. Applicant: HALL TRANSPORTATION INC., 7141 Germantown Ave.,

Philadelphia, PA 19119. Representative: Lester W. Hall (Same address as applicant), 215-248-1200. Transporting *those commodities which because of their size or weight require the use of special handling or equipment*, between points in DE, FL, GA, MD, NC, NJ, NY, PA, SC, VA, and DC.

MC 167418, filed April 11, 1983. Applicant: C. E. HOWARD TRANSFER CO., INC., P.O. Box 276, Andrews, SC 29510. Representative: Frank A. Graham, Jr., P.O. Box 11864, Columbia, SC 29211, (803) 799-9122. Transporting *Iron and steel articles*, between points in Georgetown County, SC, on the one hand, and, on the other, points in AL, DE, FL, GA, IL, IN, KY, LA, MD, MS, MO, NC, OH, PA, TN, VA, WV, and WI.

MC 167428, filed April 15, 1983. Applicant: DESERT EMPIRE TRANSFER & STORAGE, INC., Building 5, 3016 Kansas Ave., Riverside, CA 92507. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945-2745. Transporting *tobacco products*, between points in Riverside County, CA, on the one hand, and, on the other, points in Clark County, NV.

MC 167439, filed April 15, 1983. Applicant: R.B.W., INC., 3101 Poplar St., Terre Haute, IN 47803. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846-6655. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in IN, on the one hand, and, on the other, points in KY, IL, GA, MI, MO, OH, TN, and WI.

[FR Doc. 83-12153 Filed 5-6-83; 6:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the *Federal Register* on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the *Federal Register* on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must

follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the *Federal Register* on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be

satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team 4 at (202) 275-7669.

Volume No. OP4-161

Decided: April 29, 1983.

By the Commission, Review Board No. 2, members Carleton, Williams, and Ewing.

MC 159987 (Sub-1), filed April 21, 1983. Applicant: THE 7 BROTHERS INTERNATIONAL, INC., Seven Brothers Square, Bronx, NY 10452.

Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, D.C. 20423, (202) 785-0024. As a broker of general commodities (except household goods), between points in the U.S. (except AK and HI).

MC 160757 (Sub-1), filed April 25, 1983. Applicant: CENTURY TOURS, INC., 306 Stiles Court, Pompton Lakes, NJ 07442. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572-5551. 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 162886 (Sub-1), filed April 20, 1983. Applicant: AIRPORT LIMO, INC., 1200 N. Hudson St., Arlington, VA 22201. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, D.C. 20005. 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 167457, filed April 18, 1983. Applicant: CONNIE SUE WALTERS, d.b.a. PRECISION SHIPPERS, INTERSTATE, P.O. Box 1361, Parkersburg, WV 26101. Representative: Michael R. Martin (same address as

applicant), (304) 428-5465. (1) Transporting, for or on behalf of the United States Government, general commodities (except household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) as a broker of general commodities (except used household goods), between points in the U.S. (except AK and HI).

MC 167477, filed April 18, 1983. Applicant: NEWBOS TRUCKING COMPANY, INC., 25 Longfellow Rd., Newton, MA 02162. Representative: Stephen L. Tober, 381 Middle St., Concord, NH 03301, (603) 431-1002. As a broker of general commodities (except household goods), between points in the U.S.

MC 167547, filed April 20, 1983. Applicant: THE PALMERI MOTORCOACH CORPORATION, P.O. Box 45, Martins Creek, PA 18063. Representative: D. Mark Thomas, P.O. Box 999, Harrisburg, PA 17108, (717) 255-7600. Transporting passengers, in charter and special operations, beginning and ending at points in PA, NJ and NY, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 167556, filed April 21, 1983. Applicant: C2C TRANSPORTATION BROKERAGE CORP., 81 Eastridge Dr., Waterbury, CT 06708. Representative: Joseph M. O'Leary (same address as applicant), (203) 573-0282. As a broker of general commodities (except household goods), between points in the U.S.

MC 167557, filed April 21, 1983. Applicant: MODERN VAN SERVICE, INC., P.O. Box 2205, Clarksville, TN 37040-0404. Representative: David Earl Tinker, 1000 Connecticut Ave., NW., Suite 1112, Washington, DC 20036-5391, (202) 887-5868. Transporting (1), for or on behalf of the United States Government, general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, and (3) used household goods for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 167577, filed April 22, 1983. Applicant: BRANTLEY TOURS, INC., 1106 Tremont Rd., Wilson, NC 27893. Representative: Luray D. Brantley (same address as applicant), (919) 291-9882.

Transporting passengers, in charter and special operations, beginning and ending at points in Wilson, Edgecombe, Nash, and Wayne Counties, NC, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

For the following, please direct status calls to Team 1 at 202-275-7992.

Volume No. OP1-160

Decided: April 29, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 156991 (Sub-1), filed April 19, 1983. Applicant: JOE LOUIS GLADNEY, d.b.a. GLADNEY TRANSPORTATION, 2739 Greenmount Ave., Baltimore, MD 21218. Representative: Joe Louis Gladney (same address as applicant), (301) 235-2100. 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 164101 (Sub-1), filed April 15, 1983. Applicant: OPEN ROAD EXPRESS, INC., Port Street, P.O. Box 4128, Newark, NJ 07114. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. As a broker of general commodities (except household goods), between points in the U.S. (except AK and HI).

MC 167540, filed April 18, 1983. Applicant: FALCON ENTERPRISES, INC., 118 Hall St., P.O. Box 2009, Concord, NH 03301. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742-3530. As a broker of general commodities (except household goods), between points in the U.S. (except AK and HI).

MC 167570, filed April 21, 1983. Applicant: WILLAMETTE VALLEY STAGE LINE, INC., 3594 Dove Lane, Eugene, OR 97402. Representative: Jerry R. Woods, Room 104 Flavia Hall, P.O. Box 28, Marylhurst, OR 97036, (503) 635-5600. 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 167590, filed April 22, 1983. Applicant: RAYMOND TALMADGE, d.b.a., CALVARY COACH, 100 N. 58th Street, Philadelphia, PA 19139. Representative: James Robert Evans, 145 W. Wisconsin Avenue, Neenah, WI 54956, (414) 722-2848. Transporting passengers, in charter and special operations, beginning and ending at points in DE, MD, NJ, and PA, and

extending to points in the U.S. (except AK and 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. OP5-205

Decided: April 25, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 2908 (Sub-33), filed April 15, 1983. Applicant: CAPITAL MOTOR LINES, d.b.a. CAPITAL TRAILWAY, P.O. Box 1427, Montgomery, AL 36102. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751-2441. (1) Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI), and (2) 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 167378, filed April 12, 1983. Applicant: METROPOLITAN LOGISTIC SERVICES, 75 Broad Ave., Fairview, NJ 07022. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY 10048, (212) 466-0220. To operate as a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5-207

Decided: April 26, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 167468, filed April 18, 1983. Applicant: GERALD GRANUM, d.b.a. GRANUM TRUCKING, R.R. 2, P.O. Box 327, Volga, SD 57071. Representative: Gerald Granum (same address as applicant), (605) 627-9907. 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 129948 (Sub-3(B)), filed April 15, 1983. Applicant: WHITE PINE TRANSIT CO., INC., 400 E. Leonard St., P.O. Box 681, Ironwood, MI 49938. Representative: Robert J. Brooks, 1828 L St., NW., Suite 1111, Washington, DC 20036, 202-466-3892. Transporting *passengers*, in

charter and special operations, between points in the U.S.

Note.—(a) Applicant seeks to provide privately-funded charter and special transportation. (b) Applicant also seeks authority in MC-129948 Sub 3(A) published in the same issue.

[FR Doc. 83-12152 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

The following restriction removal applications, are governed by 49 CFR Part 1165. Part 1165 was published in the *Federal Register* of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

Agatha L. Mergenovich,
Secretary.

For the following, please direct status calls to Team 2 at 202-275-7030.

Volume No. OP2-203

Decided: April 29, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 70272 (Sub-33)X, filed April 20, 1983. Applicant: AMBASSADOR MOVING SYSTEMS, INC., 8019 Belair Rd., Baltimore, MD 20234. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006, 202-833-8884. Sub-No. 32 certificate: broaden the commodity description from household goods, as defined by the

Commission, to "household goods and furniture and fixtures."

MC 142713 (Sub-2)X, filed April 11, 1983. Applicant: PETER GOLDING, d.b.a. SEVEN BROTHERS TRUCKING CO., 1055 Highland Ave., Needham, MA 02194. Representative: Peter Golding (same address as applicant), (617) 449-1060. Sub-No. 1: (1) remove the facility restrictions; and (2) change radial to non-radial territory.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-201

Decided: April 25, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 228 (Sub-86)X, filed April 7, 1983. Applicant: HUDSON TRANSIT LINES, INC., 17 Franklin Turnpike, Mahwah, NJ 07430. Representative: Samuel B. Jamieson, Jr. (same address as applicant), (201) 529-3666. Sub 65 certificate: Remove the following restriction: "RESTRICTION: Service is restricted against the transportation of passengers and their baggage between junction County Highway 79 and New York Highway 32, near Modena, NY, and points north thereof to and including New Paltz, NY, on the one hand, and, on the other, points along Route 17 in NJ, New York City, and points through the New York City gateway."

[FR Doc. 83-12145 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Proposed Exemptions; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Proposed Exemptions; Correction.

SUMMARY: In No. MC-F-15161, Vernon G. Sawyer, also published under the volume No. OP4-MCF-210 (April 12, 1983, 48 FR 15739), four of the paragraph numbers that should have been listed with those named under Sawyer Transport's operating rights contained in Certificate No. MC-123407 (Sub-No. 668)X were inadvertently omitted. The purpose of this document is to correct that error by adding to that list of paragraph numbers the four that were omitted.

Please make the following correction:

On page 15739, third column, under MC-F-15161, add paragraph numbers 56, 187, 248, and 296 between lines 24 and 29 in their proper numerical sequence.

FOR FURTHER INFORMATION CONTACT:
Warren Wood, (202) 275-7977.

By the Commission, Heber P. Hardy,
Director, Office of Proceedings.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-12147 Filed 5-6-83; 6:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Notice of Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of approved exemptions.

SUMMARY: The motor carriers shown below have been granted exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemptions will be effective on June 6, 1983. Petitions for reconsideration must be filed by May 28, 1983. Petitions for stay must be filed by May 16, 1983.

FOR FURTHER INFORMATION CONTACT:
Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceedings(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution ave., NW, Washington, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside of the DC area.

Agatha L. Mergenovich,
Secretary.

[No. MC-F-15038]

Kreider Truck Service, Inc.—Control Exemption—Cryogenic Transportation, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Marshall Kragen, 1919 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20006.

Pleadings should refer to No. MC-F-15038.

Decided: April 29, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(3) the proposed acquisition of control by Kreider Truck Service, Inc.

(MC-114194) of Cryogenic Transportation, Inc. (MC-160798), through purchase of 50 percent of Cryogenic's stock.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Sterrett concurred except for the second ordering paragraph in the decision.

[No. MC-F-15102]

B.N.T. Service Inc.—Purchase Exemption—Spector Red Ball, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Joseph T. Bambrick, Jr., Douglassville, PA 19518.

Pleadings should refer to No. MC-F-15102.

Decided: April 28, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval, the purchase by B.N.T. Service Inc. (No. MC-148848), a portion of Spector Red Ball, Inc.'s authority in Certificate No. MC-2229 (Sub-No. 250) which authorizes the regular-route transportation of general commodities (with exceptions) along specified routes and between named points in IL, MN, and WI.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett.

[No. MC-F-15112]

Cheyenne Transportation, Inc.—Purchase Exemption—Floyd Duenow, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: William J. Gambucci, Hovland & Gambucci, 525 Lumber Exchange Building, Ten South Fifth Street, Minneapolis, MN 55402.

Pleadings should refer to No. MC-F-15112.

Decided: April 29, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a) the purchase by Cheyenne Transportation, Inc., of the operating rights of Floyd Duenow, Inc., contained in Certificate No. MC-127187 (Sub-No. 59) and Permits No. MC-127187 (Sub-No. 58) and MC-1522892 (Sub-No. 1).

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett.

[No. MC-F-15113]

Henry V. Rabouin, Inc.—Purchase Exemption—Bob's Transport and Storage Co., Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666.

Decided: April 29, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval under 49 U.S.C. 11343 the purchase by Henry V. Rabouin, Inc. (No. MC-30618) of a portion of the outstanding authority of Bob's Transport & Storage Co., Inc. (No. MC-148624).

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.

[No. MC-F-15031]

McCoy Group, Inc.—Continuance in Control Exemption—McCoy of Wisconsin, Inc. d.b.a. Food Liner, Inc., McMorhan Trucking Co., Inc., and GMC Motor Truck Service, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Donald B. Levine, 180 North LaSalle Street, Suite 2210, Chicago, IL 60601.

Pleadings should refer to No. MC-F-15031.

Decided: April 29, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343, the continuance in control of McCoy of Wisconsin, Inc., d.b.a. Food Liner, Inc. (MC-163711), McMorhan Trucking Co., Inc. (MC-136774 and MC-143029), and GMC Motor Truck Service, Inc. (MC-155774) by McCoy Group, Inc., and in turn, its stockholders Robert L. McCoy, his wife, and their children, John R. McCoy, Robert S. McCoy, R. Michael McCoy, Nancy J. Weller and Denise Shane.

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.

[No. MC-F-15123]

Bowhay Truck Line, Inc.—Purchase Exemption—Johnson Truck Line, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' representatives: Jack L. Shultz (Bowhay), Nelson & Harding, P.O. Box 82028, Lincoln, NE 68501-2028; William B. Barker (Johnson), Jandera, Gregg & Barker, P.O. Box 1979, Topeka, KS 66601.

Pleading should refer to No. MC-F-15123.

Decided: April 29, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval under 49 U.S.C. 11343 the purchase by Bowhay Truck Line, Inc. of the authority of Johnson Truck Line, Inc. in Certificate No. MC-105774 (Sub-Nos. 3, 4, and 8X). Sub-No. 8X, which supersedes Sub-Nos. 3 and 4, and embraces them, authorizes the irregular-route transportation of metal products and machinery, (1) between points in 38 States, on the one hand, and, on the other, points in Clay and Osborne Counties, KS, and (2) between points in Mitchell County, KS, on the one hand, and, on the other, points in 25 States.

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.

[No. MC-F-15142]

Howard Dullum—Purchase Exemption—Texas Western Express, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Clayte Binion, 623 South Henderson, Second Floor, Ft. Worth, TX 76104.

Pleadings should refer to No. MC-F-15142.

Decided: April 28, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the purchase by Howard Dullum of the operating rights of Texas Western Express, Inc., contained in Certificate No. MC-152406 (Sub-Nos. 2 and 3).

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett.

[No. MC-F-15152]

Valley Transportation Service, Inc.—Merger Exemption—L.C.W. Transportation Service, Inc., Reentitled L.C.W. Transportation Service, Inc.—Merger Exemption—Valley Transportation Service, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064.

Pleadings should refer to No. MC-F-15152.

Decided: April 28, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(1), the merger of the operating rights of Valley Transportation Service (No. MC-149553) into L.C.W. Transportation Service, Inc. (No. MC-15304). The operating rights of Valley in No. MC-149553 to be merged are contained in certificates issued in Sub-No. 1, for food or kindred products as described in Item 20 of the Standard Transportation Commodity Code Tariff, between points in Lucas and Sandusky Counties, OH, Allegheny County, PA, Muscatine and Johnson Counties, IA, and Ottawa County, MI, on the one hand, and, on the other, points in Texas; Sub-No. 2, for building materials, between points in Webb and El Paso Counties, TX, on the one hand, and, on the other, points in Oklahoma, Texas, Louisiana, Colorado, New Mexico, Utah, Kansas, Iowa, Mississippi, Illinois, Ohio, and Indiana; Sub-No. 3, for (1) food and related products, between Camden, NJ, on the one hand, and, on the other, points in Lamar County, TX, and (2) meat and meat products, between points in Texas, on the one hand, and, on the other, those points in the United States in and east of North Dakota, South Dakota, Nebraska, Colorado, and New Mexico; Sub-No. 5, for general commodities (except classes A and B explosives), between the facilities of Union Camp Corporation, at points in the United States, on the one hand, and, on the other, points in the United States; Sub-No. 6, for foodstuffs, between points in Bexar, Cameron, Dallas, El Paso, Harris, Hidalgo, Tarrant, and Webb Counties, TX, on the one hand, and, on the other, those points in the United States in and west of North Dakota, South Dakota, Iowa, Missouri, Oklahoma, and Texas (except Alaska and Hawaii); Sub-No. 7, food and related products and agricultural equipment, between Oklahoma City, OK, and points in Texas, on the one

hand, and, on the other, ports of entry along the International Boundary line between the United States and the Republic of Mexico located in Texas; Sub-No. 8, for (1) such commodities as are dealt in by chain grocery and food business houses, between the facilities of Ralston Purina Company, at those points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and (2) food and related products, between points in Clinton and Lee Counties, IA, and Tazewell County, IL, on the one hand, and, on the other, points in Texas, Louisiana, and Arkansas; Sub-No. 9, for meat, meat products, meat by-products, and articles distributed by meat-packing houses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from points in Cameron and Hidalgo Counties, TX, to points in Arkansas, Kansas, Louisiana, Missouri, New Mexico, and Oklahoma; Sub-No. 10, for meats, meat products, meat byproducts, and articles distributed by meat-packing houses, as described in Sections A and C of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Chicago, IL, to points in Texas, Louisiana, and California; Sub-No. 11, for such commodities as are dealt in or used by manufacturers of photographic products, (1) from the facilities of Eastman Kodak Company at Rochester, NY, to the facilities of Eastman Kodak Company at Chamblee, GA, and Dallas, TX, and (2) between the facilities of Eastman Kodak Company at Rochester, NY, and Laredo, TX; and Sub-No. 12, for (A)(1) frozen vegetables, frozen fruits, frozen berries, frozen juices, and citrus concentrate, except in bulk, and (2) commodities which are otherwise exempt for regulation under 49 U.S. 10524(a)(6), when moving in the same vehicle at the same time with the commodities named in (1) above, from points in Cameron, Hidalgo, Webb, and El Paso Counties, TX, to points in Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, New Hampshire, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin, restricted in (1) and (2) to the use of vehicles equipped with mechanical refrigeration, (B) agricultural pesticides (except in bulk), from the

facilities of Shell Chemical Company, a division of Shell Oil Company, at or near El Paso, IL, to points in the United States (except Alaska and Hawaii), (C) petroleum and petroleum products, vehicle body sealers, and sound deadening compounds (except in bulk), from Congo (Hancock County) and St. Marys (Pleasants County), WV, to points in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Tennessee, and Texas, restricted to the transportation of traffic originating at the named origins, (D) foodstuffs (except frozen foods and commodities in bulk), from the facilities of Vlasic Foods, Inc., at Greenville, MS, to points in Alabama (except Birmingham and points in its commercial zone), Arkansas, Georgia (except Atlanta and points in its commercial zone), Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Oklahoma, Tennessee, and Texas, restricted to the transportation of traffic originating at the above facilities, (E) foodstuffs (except commodities in bulk), (1) from the facilities used by Texsun Corporation, at or near Weslaco and Harlingen, TX, to those points in the United States in and west of Michigan, Ohio, Kentucky, Tennessee, Alabama, and Florida (except Alaska and Hawaii), and (2) from the facilities used by Texsun Corporation, at or near Plymouth, IN, to points in Iowa, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Wisconsin, and West Virginia, restricted in (1) and (2) above to traffic originating and destined to the named points, (F) such merchandise as is dealt in by chain grocery and food business houses (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, between points in Alabama, Arkansas, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, North Carolina, Nebraska, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin, restricted to the transportation of traffic originating at or destined to the facilities of Kraft, Inc., (G) petroleum and petroleum products, vehicle sealer and/or sound deadener compounds (except in bulk, in tank vehicles) and filters, from points in Warren County, MS to points in Alabama, Arkansas, Florida, Georgia, Louisiana, and Texas, restricted to the transportation of traffic originating at the facilities of Quaker State Oil Refining Corporation, located in Warren County, MS, and (H)(1) copying machines, and materials, equipment, supplies and accessories used in the manufacture, service and distribution of

copying machines (except commodities in bulk), between points in California, New York, New Hampshire, and Texas, and (2) paper and paper products (except commodities in bulk), between points in California, New York, New Hampshire, and Texas (except from the facilities of (a) Eastex, Incorporated, in Jasper County, TX, (b) Southland Paper Mills, Inc., at Sheldon and Herty, TX, and (c) Rock-Tenn Corp., at Greenville, TX), restricted in (H) (1) and (2) above to traffic originating at and destined to points in the described territory; and a permit issued in Sub No. 4, for (1) canned citrus juice and citrus pulp livestock feed, in bags, from the facilities of the Texas Citrus Exchange at Harlingen and Mission, TX, to points in Oklahoma, Arkansas, Kansas, Missouri, Illinois, Nebraska, Iowa, South Dakota, Minnesota, Wisconsin, North Dakota, and Colorado, (2) canned citrus juice, from the facilities of Texas Citrus Exchange at Harlingen and Mission, TX, to points in New Mexico, Arizona, California, Indiana, and Michigan, and (3) frozen concentrated citrus products in containers, in mixed loads with canned citrus juice, from the facilities of the Texas Citrus Exchange at Harlingen, Mission, Brownsville, and McAllen, TX, to points in Oklahoma, Arkansas, Missouri, Kansas, Illinois, Nebraska, Iowa, South Dakota, Minnesota, Wisconsin, North Dakota, Colorado, New Mexico, Arizona, California, Indiana, and Michigan, restricted to transportation under a continuing contract(s) with Texas Citrus Exchange of McAllen, TX.

By the Commission, Division 2, Commissioners Gradyson, 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. [No. MC-F-15121]

Greentree Transportation Company—Purchase Exemption—Midamerican Freight, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423; and (2) Petitioner's representative: Anthony E. Young, Ltd., Suite 350, 29 South LaSalle Street, Chicago, IL 60603.

Pleadings should refer to No. MC-F-15121.

Decided: April 27, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the purchase by Greentree Transportation Company of the

interstate operating rights of Midamerican Freight, Inc., contained in Certificate No. MC-160960, and the acquisition of control of these rights by L. B. Foster Company (of which Greentree is a wholly owned subsidiary).

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.

[FR Doc. 83-12150 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

[OPY-2-206-A]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grants or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: May 3, 1983.

By the Commission.

Agatha L. Mergenovich,
Secretary.

MC-F-15147, filed March 31, 1983.
ROY J. FRANTA (110 N. Williams Ave., Baltimore, MD 21222), GLENN E. KEINBAUER (45 Lyndale Ave., Baltimore, MD 21236), HARRY E. ZECHMAN and MARY V. ZECHMAN (both of 1103—One Smeton Pl., Towson, MD 21204) KENNETH K. ZECHMAN and ETHEL C. ZECHMAN (both of 11111 Towood Rd., Kingsville, MD 21087) (Applicants)—CONTINUANCE IN CONTROL—E & M EXPRESS, INC. (E & M), (110 N. St. Andrews Dr., Ormond Beach, FL 32074). Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St. NW, Washington, DC 20005, (202) 296-3555. Applicants, non-carriers, seek authority to continue in control of E & M upon the institution by E & M of operations in

interstate or foreign commerce, as a motor contract carrier. Roy J. Franta and Glenn E. Kleinbauer each own 20 percent of the stock of E & M and Harry E. Zechman, Mary V. Zechman, Kenneth K. Zechman, and Ethel C. Zechman, each own 15 percent of the stock of E & M. The applicants seek to acquire control of said rights and property through the transaction. All applicants (except Mary V. Zechman) own stock and are officers and directors of The Blue Diamond Company, which holds authority issued by the Commission under Docket No. MC-113106 and subs thereunder.

Note.—(1) By decision served March 24, 1983, in No. MC-F-15147, applicants have been relieved from filing a detailed abstract of shipments as required by Section B-4 of Form OP-F-45; and (2) E & M has filed a directly related application, its initial contract-carrier application, docketed MC-167162, published in the Federal Register this issue.

[FR Doc. 83-12149 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

(Ex Parte No. 387)

Rail Carriers; Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice.¹ These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

¹ Note tariff supplements advancing contract's effective date shall refer to these decisions for authority.

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract No., and specifics	Review Board	Decided date
907	Burlington Northern RR Co., Exemption for Contract, Tariff ICC-BN-C-0239 (Coal)	1	04-28-83
908	Burlington Northern RR Co., Exemption for Contract, Tariff ICC-BN-C-0238 (Coal)	2	04-28-83
910	Burlington Northern RR Co., Exemption for Contract, Tariff ICC-BN-C-0240 (Coal)	1	04-28-83
911	Norfolk and Western Railway Company, Exemption for Contract, Tariff ICC-NW-C-7020, Supp. 1 (Bituminous Coal), via Port of Sandusky Dock, Ohio	1	04-28-83
914	The Denver and Rio Grande Western RR Co., Exemption for Contract, Tariff ICC-DRGW-C-0083, Supplement 2 (Iron and Steel Plate)	1	04-28-83
915	Alaska Railroad, Exemption for Contract, Tariff ICC-ARR-C-0012 (Petroleum Products)	2	04-28-83
916	Pittsburgh and Lake Erie RR Co., Exemption for Contract, Tariff ICC-PLC-C-0104 (Bituminous Steam Coal), via Port of Ashtabula Harbor, Ohio	2	04-28-83
917	The Pittsburgh and Lake Erie RR Co., Exemption for Contract, Tariff ICC-PLC-C-05, Supplement 1 (Iron Ore), via Port of Ashtabula Harbor, Ohio	3	04-28-83

¹ Review Board No. 1, Members Parker, Chandler, and Fortier. Review Board No. 2, Members Carleton, Williams, and Ewing. Review Board No. 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10505.

By the Commission.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-12022 Filed 5-5-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Agency Forms Under Review

May 3, 1983.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title

of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96-511 applies; (10) The name and telephone number of the person or office responsible for OMB review.

Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

DEPARTMENT OF JUSTICE

Agency Clearance Officer Larry E. Miesse—202-633-4312

Revision

- Immigration and Naturalization Service, Department of Justice Application by Nonimmigrant Student for Extension of Stay, School Transfer, and Permission to Accept or Continue Employment or Practical Training On occasion Individuals or households, Businesses or other for-profit, Non-profit institutions Nonimmigrant students/educational institutions: 93,000 responses; 31,000 hours; not applicable under 3504(h). David Reed—395-7231

Larry E. Miesse,

Department Clearance Officer, Systems Policy Staff, Office of Information Technology, Justice Management Division, Department of Justice.

[FR Doc. 83-12130 Filed 5-5-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Advisory Committee on Sheltered Workshops

A meeting of the Advisory Committee on Sheltered Workshops will be held on May 25, 1983, from 8:00 a.m. to 5:00 p.m. and on May 26 from 8:00 a.m. to 4:30 p.m. The meeting will be held in Rm.

N3437 A, B, C, and D Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, DC. Subcommittee meetings will be held in the same rooms on May 24, 1983, from 9:30 a.m. to 2:30 p.m.

The Committee will consider topics concerning the employment of handicapped workers employed at subminimum wages under section 14(c) of the Fair Labor Standards Act. Major areas for discussion include a review of the recommendations made at the last meeting along with the Department's response, reports from the various subcommittees, and a review of the regulations (CFR Part 529) governing the employment of patient workers in hospitals and institutions. Other topics may also be included on the agenda or introduced during the meeting.

The four subcommittees that have been constituted by the Committee are the following: a subcommittee to review methods for calculating piece rates paid handicapped workers employed in sheltered workshops; a subcommittee to review the Department's application forms for special minimum wage certificates for sheltered workshops; a subcommittee to review and revise the Committee's publication *A Statement of Principles Respecting the Policies, Organization, Operation and Service Activities of Sheltered Workshops And Homebound Programs*; and a subcommittee to review Section 14(c) of the Fair Labor Standards Act which provides for the employment of handicapped workers at special lower minimum wages.

Members of the public are invited to attend the proceedings, including the meetings of the subcommittees. Written data, views, or arguments pertaining to the business before the Committee must be received by the Committee's Secretariat prior to the meeting date.

Telephone inquiries and communications concerning this meeting should be directed to: Arthur H. Korn, Secretariat for the Advisory Committee on Sheltered Workshops, Rm C4316, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone no. 202/523-8727. This is not a toll free telephone number.

Signed in Washington, DC, this 3rd day of May 1983.

William M. Otter,
Administrator.

[FR Doc. 83-12213 Filed 5-5-83; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Notice of Ending of Extended Benefit Period in the State of Indiana

This notice announces the ending of the Extended Benefit Period in the State of Indiana, effective on April 30, 1983.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Indiana on January 16, 1983 and has now triggered off.

Determination of "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on April 9, 1983, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week

there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending on April 30, 1983.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C. on April 28, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-12206 Filed 5-5-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,616, 13,676 and 13,698]

Duval Corp., Mineral Park Property, Kingman, Arizona; Sierrita Property, Sahuarita, Arizona; Esperanza Property, Tucson, Arizona; Negative Determination Regarding Application for Reconsideration

By an application dated March 31, 1983, the United Steelworkers of America requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at the Duval Corporation's Mineral Park Property, Sierrita Property, and Esperanza Property, Arizona. The determination was published in the *Federal Register* on March 22, 1983 (48 FR 12006).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

In its request for reconsideration, the Union argues that the Department's decision should have been based on the total copper content of imported copper (ore concentrates, matte, blister, refined

and scrap) instead of imports of refined copper. The Union indicated that there was no survey of customers of Duval Corporation cited in the Department's negative determination. Lastly, the Union suggests that the Duval Corporation determination was inconsistent with those issued by the Department for workers producing refined copper at Kennecott Corporation, TA-W-13,509; 13,628; 13,648 and 13,649.

The Department's review showed that U.S. imports of refined copper declined both absolutely and relative to domestic production in 1981 compared to 1980 and in the January through September 1982 period compared to the same period in 1981. U.S. imports of molybdenum compounds are negligible. The Department found that since ferromolybdenum accounted for a relatively small percentage of total production, any import influence in this product line could not have contributed importantly to overall employment declines.

In the instant case the Department's investigation revealed that all copper ore and copper concentrates produced by the company were used in company production of cathodes. Neither copper ore nor copper concentrate was marketed to outside customers. That being the case, the proper focus of competitive impact is on the final product i.e., copper cathodes. The Department used imports of refined copper as the product like or directly competitive with the product produced by the company. The investigation revealed that refined copper imports had declined both in absolute and relative terms during the period relevant to the investigation. Total domestic production of refined copper declined while U.S. exports of refined copper increased during the investigative period.

The Department is not obliged to conduct a customer survey to substantiate the "contributed importantly" part of Section 222 of the Act for group certification if the increased import criterion of that Section is not met. All of the criteria of Section 222 of the Act must be met for certification.

The Department's initial denial for trade adjustment assistance for Duval workers is not inconsistent with certifications issued to the Kennecott Corporation. The decisions were different because the facts pertinent to the decision in the respective cases were different. Each worker petition must be handled on its own merits for the appropriate time frame for which it was filed in determining whether it

meets the statutory criteria of Section 222 of the Trade Act. The worker investigations for workers at Kennecott (TA-W-13,509; 13,628; 13,648 and 13,649) were instituted in an earlier time frame when only import data for the first six months of 1982 was available. The data was used in conjunction with company data for the same period. The worker petitions for workers at Duval Corporation (TA-W-13,616; 13,676 and 13,698) were filed later when data on imports of refined copper in the first nine months of 1982 became available. Data now on file show that U.S. imports of refined copper for the entire 1982 year declined 22 percent compared to 1981. Company data for the same relevant period was used in the investigation.

Conclusion

After careful review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

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

Robert O. Deslongchamps,

Acting Deputy Administrator, Unemployment Insurance Service.

[FR Doc. 83-12201 Filed 5-5-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13, 506]

Hecla Mining Corp., Star Mine, Wallace, Idaho; Affirmative Determination Regarding Application for Reconsideration

By an application dated March 30, 1983, company officials requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers of Hecla Mining Corporation's Star mine in Wallace, Idaho. The determination was published in the *Federal Register*, on March 4, 1983 (48 FR 9391).

The application for reconsideration claims that workers of their major customer, who jointly owns the Star mine with Hecla, were certified for trade adjustment assistance subsequent to the Department's denial of trade adjustment assistance to workers at Hecla's Star mine.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of

Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C., this April 28, 1983.

Robert Dealongchamps,

Acting Deputy Administrator, Unemployment Insurance Service.

[FR Doc. 83-12202 Filed 5-5-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,487]

Lello Fashions, North Bergen, N.J.; Affirmative Determination Regarding Application for Reconsideration

By an application dated April 15, 1983, a company official requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of Lello Fashions, North Bergen, New Jersey. The determination was published in the Federal Register on March 22, 1983 (48 FR 12006).

The application for reconsideration claims that Lello Fashions' major manufacturer in 1980 closed in 1981 and the Department certified those workers for trade adjustment assistance.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this April 28, 1983.

Robert Dealongchamps,

Acting Deputy Administrator, Unemployment Insurance Service.

[FR Doc. 83-12202 Filed 5-5-83; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-83-2-M]

Hecla Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Hecla Mining Company, P.O. Box 320, Wallace, Idaho 83873 has filed a petition to modify the application of 30 CFR 57.4-43 (buildings; fire resistance requirements) to its Atlas Mine project (I.D. No. 10-00168) located in Shoshone County, Idaho. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the

requirement that buildings and other similar structures, which are within 100 feet of mine openings used for intake air or designated as escapeways in exhaust air, be constructed of fire-resistant materials.

2. The Atlas project is a development project and not in production at this time. All work is being done on the main level approximately 6,000 feet in from the portal. There are no shafts on the property.

3. There is a wood-frame structure located approximately 80 feet from the south tunnel portal which houses the mine compressors and repair shop, and is used as a lamp room. No combustible liquids are stored in the building.

4. As an alternate method, petitioner proposes to:

a. Install metal sheeting on the outside of the front (side facing the portal) of the building;

b. Install 5/8 inch sheetrock on the inside front wall of the building;

c. Install and maintain a vent door on the portal to the mine;

d. Install a fan reversing switch near the mine's refuge area on the main underground 20 hp exhaust fan; and

e. Maintain a fire hydrant and hoses at a location between the building and the mine portal.

4. Petitioner states that by the use of the reversing capability of the 20 hp surface fan and the 20 hp underground exhaust fan (with the reversing switch near the underground refuge chamber), and by closing the portal vent door, fresh air would be drawn in from the exhaust opening and any smoke near the portal would not be drawn into the mine.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 6, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-12210 Filed 5-5-83; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-36-M]

Siegrist Construction Co.; Petition for Modification of Application of Mandatory Safety Standard

Siegrist Construction Company, 6999 York Street, Denver, Colorado 80229-7399 has filed a petition to modify the application of 30 CFR 56.4-27 (fire extinguishers on self-propelled mobile equipment) to its Pacific Pit (I.D. No. 05-03785) located in Adams County, Colorado, Del Camino Properties (I.D. No. 05-03788) located in Weld County, Colorado, and its Colorado Sand and Gravel Operations (I.D. No. 05-03789) located in Adams County, Colorado. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever self-propelled mobile equipment is used, such equipment be provided with a suitable fire extinguisher readily accessible to the equipment operator.

2. Fire extinguishers cannot be maintained in perfect working order at all times on the self-propelled mining equipment because of theft, extreme vibration, dirt and weather. For this reason, should a fire occur on the equipment, an operable extinguisher may not be present on the equipment.

3. As an alternative method, petitioner proposes to locate fire extinguishers on the crusher, in the tool trailer, scale house, superintendent's pickup, all mechanics' trucks and water trucks, each clearly marked by signs. Fire extinguishers will be checked daily to assure they are in working order. All employees will be instructed in the proper use and location of the extinguishers. A two-way radio will be located in the superintendent's pickup, capable of making contact with the home office to obtain necessary assistance.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments.

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 6, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,
Acting Director, Office of Standards,
Regulations and Variances.

[FR Doc. 83-12209 Filed 5-5-83; 8:45 am]
BILLING CODE 4510-43-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 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.

Revision

- Employment Standards Administration

Miner's Claim for Benefits Under the Black Lung Benefits Act; History of Coal Mine Employment; Drug, Respiratory Therapy, Oxygen and Medical Equipment Reimbursement Form

CM-911, CM-911a, CM-915

Annually (CM-911 & CM-911a); As needed (CM-915)

Individuals or households

172,000 responses; 28,083 hours, 3 forms

The miner's claim for benefits under the Black Lung Benefits Act must be revised to obtain earnings information from miner's filing a claim after December 31, 1981, as required by the 1981 amendments to the Act so benefits may be adjusted due to excess earnings.

Extension (Adjustment To Burden)

- Employment Standards Administration

Black Lung Medical Reports (20 CFR 718)

CM-907, CM-933, CM-933B, CM-988, CM-1159

On occasion

Businesses or other institutions

Small business or organization

SIC: 801

55,000 responses; 11,001 hours; 5 forms

20 CFR Part 718 specifies that certain information relative to the medical condition of a claimant who is alleging the presence of pneumoconiosis be obtained as a routine function of the claims adjudication process. The medical specifications in the regulations have been formulated in a variety of forms to promote efficiency and accuracy in gathering the required data.

Signed at Washington, D.C. this 3rd day of May 1983.

Paul E. Larson,
Departmental Clearance Officer.

[FR Doc. 83-12204 Filed 5-5-83; 8:45 am]

BILLING CODES 4510-26-M; 4510-43-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), 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 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.

New

- Mine Safety and Health Administration

Record of Examination for Hazardous Conditions

MSHA 233R

Daily

Businesses or other institutions; small business or organization

SIC: 111 and 121

1,950,840 responses; 975,420 hours

One Form

Requires reports of daily inspection for hazardous conditions in surface coal mines and surface work areas of underground coal mines.

- Ventilation System and Methane and Dust Control Plan

MSHA 204

Semiannually—active mines; annually—new mines

Businesses or other institutions; small business or organization

SIC: 111 and 121

5,742 responses, 19,926 hours

Requires the operator to submit a detailed ventilation system and methane and dust control plan including an up-to-date map of the mine to MSHA for approval. The plan shows the type and location of mechanical ventilation equipment installed and operated in the mine and the quantity and velocity of air reaching each working face.

Revision

- Occupational Safety and Health Administration

Cotton Dust 39 CFR 1910.1043

On occasion

Business or other institutions; small business or organization

SIC: Multiple

178,000 responses; 71,200 hours

This regulation requires employers to establish and maintain accurate records of exposure monitoring and medical surveillance for employees exposed to cotton dust. These records are used by the employer, employee, physician and the government in determining whether an employee's exposure to cotton dust has had an effect on his/her health.

Reinstatements

- Mine Safety and Health Administration

Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment

MSHA 220R

Quarterly

Businesses or other institutions; small business or organization

SIC: 111 and 121

5,742 responses, 36,476 hours

Requires operators to keep a record of fire drills and institute a program to train all miners in the use and location of fire fighting equipment.

- Department Management Supplemental Qualifications Statement DL 1-385

On occasion

Individuals or households

SIC: 999

11,625 responses; 23,250 hours

One form

This form will be used to elicit information on the qualifications of applicants. The information received from each candidate will be evaluated by a panel of Subject Matter Experts and/or Qualification Rating Examiners to determine which candidates are the best qualified and will be referred for selection.

- Occupational Safety and Health Administration

Report of Injuries to Employees

Operating Mechanical Power Presses

When injury occurs

Business or other institutions; small business or organization

SIC: Multiple

400 responses; 120 hours

This report is necessary in order that OSHA may conduct an on-going analysis of mechanical power press injuries. The report is used to record and evaluate the causal factors of such injuries and thus monitor the effectiveness of the standard for continued use or revision when found appropriate.

Signed at Washington, D.C., this 29th day of April 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-12205 Filed 5-5-83; 8:45 am]

BILLING CODE 4510-26-M; 4510-43-M

MERIT SYSTEMS PROTECTION BOARD

Office Names, Rooms, and Telephone Numbers; Changes

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Changes in office Names, Rooms, and Telephone Numbers.

SUMMARY: The Merit Systems Protection Board announces that the former Docket Room, Office of the Secretary, is now named the Appellate Jurisdiction Branch and is located in Room 1204, 1120 Vermont Avenue, NW., Washington, D.C. 20419. The telephone numbers are

653-8120 and 653-8125. Also, the former Special Case Management Division, Office of the Secretary, is now named the Original Jurisdiction Branch and is located in Room 1206. The telephone numbers are 653-8239 or 653-7130. All documents filed, or required to be filed in any proceeding before the Board, shall be filed with the Office of the Secretary in the appropriate office noted above, between 8:00 a.m. and 5:30 p.m., Monday through Friday (except Federal holidays). Documents hand delivered for filing must be submitted by 5:30 p.m. to be accepted for filing on that day.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Woodyard, Chief, Appellate Jurisdiction Branch, 653-8120, or Delores Satterfield, Chief, Original Jurisdiction Branch, 653-7130.

Dated: April 27, 1983.

For the Board.

Herbert E. Ellingswood,

Chairman.

[FR Doc. 83-11906 Filed 5-5-83; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-40]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); 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 and Earth Science Advisory Committee.

DATE AND TIME: May 24, 1983, 10:30 a.m. to 5:30 p.m.; May 25, 1983, 8:30 a.m. to 5:30 p.m.; and May 26, 1983, 8:30 a.m. to 1 p.m.

ADDRESS: National Aeronautics and Space Administration, Room B226-A, 600 Independence Avenue SW, Washington, DC 20546

FOR FURTHER INFORMATION CONTACT:

Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-3653).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space and

Earth Science programs. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members and other participants). Topics under discussion at this meeting will include an update of FY 1984 Budget and Program Status; FY 1985 Program and Budget Issues; a discussion of the Space Science Board Earth Science Strategy and possible new initiatives in the Earth Sciences, and a discussion on planning strategies and priorities.

Type of meeting: Open

AGENDA

May 24, 1983

10:30 a.m.—Introduction, Announcements, Meeting Logistics, and Other Administrative Matters.

10:45 a.m.—Update on FY 1984 Budget and Program status and FY 1985 Budget Prospects and Issues.

1 p.m.—FY 1985 Program and Budget Issues from the Perspective of the Division Directors.

2:30 p.m.—Space Science Board—Earth Science Strategy.

4:30 p.m.—Status of Possible New Earth Science Initiatives.

5:30 p.m.—Adjourn.

May 25, 1983

8:30 a.m.—Status of NASA/University Relations Study.

9:15 a.m.—Astronomy Survey Committee Report/A Summary.

10:30 a.m.—Spacelab Payloads/A Status Report.

11:30 a.m.—A Proposal for a Planetary Observer Line.

1:15 p.m.—Discussion of Planning Strategies and Priorities.

4 p.m.—Splinter Meetings/Planning.

5:30 p.m.—Adjourn.

May 26, 1983

8:30 a.m.—Planning Group Reports: Continuation of General Discussion, and Formulation of Recommendations.

12:30 p.m.—Plans for Next Meeting.

1 p.m.—Adjourn.

Ann P. Bradley,

Acting Associate Administrator for Management, Office of Management.

April 26, 1983.

[FR Doc. 83-12162 Filed 5-5-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Council; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Council.

Place: Room 540, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Date: Thursday and Friday, May 26-27, 1983.

Time: 9:00-5:00 p.m., May 28; 9:00-12 Noon, May 27.

Type of Meeting: Open.

Contact Person: Ms. Jeanne Hudson, Executive Secretary, NFS Advisory Council, National Science Foundation, Rm. 518, 1800 G Street, N.W., Washington, D.C. 20550. Telephone: 202/357-9419.

Purpose of Advisory Council: The purpose of the NSF Advisory Council is to provide advice and counsel to the NSF Director and principal members of his staff on Foundationwide issues which require the expertise of the many and varied disciplines and program interests represented in the Foundation.

Summary Minutes: May be obtained from the contact person at above stated address.

Agenda: To review progress by the three task groups of the NSF Advisory Council and to meet with the Director and NSF Staff.

M. Rebecca Winkler,

Committee Management Coordinator.

May 3, 1983.

[FR Doc. 83-12156 Filed 5-5-83; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for PCM, Subpanel on Genetic 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 Genetic Biology of the Advisory Panel for Physiology, Cellular and Molecular Biology.

Date and Time: May 26-28, 1983, 9:00 AM-5:30 PM.

Place: Room 643, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Philip D. Harriman, Program Director, Genetic Biology Program, Room 329, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-9687.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in genetic 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 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 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.

M. Rebecca Winkler,

Committee Management Coordinator.

May 3, 1983.

[FR Doc. 83-12157 Filed 5-5-83; 8:45 am]

BILLING CODE 7555-01-M

Subpanel on Molecular Biology, Group B, of the Advisory Panel for the 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 meetings:

Name: Subpanel on Biophysics/Biochemistry Programs, Group B, of the Advisory Panel for Physiology, Cellular, and Molecular Biology.

Date and Time: May 23 and 24, 1983, 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G ST, NW, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Huber Warner, Program Director, Biochemistry Program, Room 329, National Science Foundation, Washington, DC 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 confidential 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.

M. Rebecca Winkler,

Committee Management Coordinator.

May 3, 1983.

[FR Doc. 83-12156 Filed 5-5-83; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby

given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, June 2, 1983
Thursday, June 9, 1983
Thursday, June 16, 1983
Thursday, June 23, 1983
Thursday, June 30, 1983

These meetings will convene at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-483) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage

System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415; (202-632-9710).

William B. Davidson, Jr.,
Chairman, Federal Prevailing Rate Advisory Committee,
May 3, 1983.

[FR Doc. 83-12235 Filed 5-5-83; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-39]

Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers; Initiation of Investigation

On March 16, 1983, the Chairman of the Section 301 Committee received a petition filed under Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 et seq.) from the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers alleging that the Republic of Korea has engaged in practices which are inconsistent with its obligations under the General Agreement on Tariffs and Trade (GATT) and the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code) and are unjustifiable and discriminatory and a burden on U.S. commerce. These alleged practices include:

- (1) The provision of subsidized inputs from state-owned entities;
- (2) The provision of direct production subsidies to wire rope producers;
- (3) The provision of export subsidies to wire rope exporters;
- (4) The infringement of U.S. trademarks through the marketing of wire rope in the U.S. which is improperly marked; and
- (5) The restriction of Korean wire rope exports to Japan and resulting diversion of those exports to the U.S. market.

A copy of the petition is available for public inspection at the address listed below.

On May 2, 1983, the United States Trade Representative (USTR) decided to initiate an investigation with respect to the first two allegations listed above. For the reasons set forth below, the USTR decided not to include the remaining allegations within the scope of the investigation.

With respect to the third allegation, the USTR decided not to initiate an investigation because pursuant to Art. 14(5) of the Subsidies Code, Korea has entered into a commitment with respect to its export subsidies and the United States, pursuant to Art. 14(6) and 14(8), is precluded from challenging Korea's use of export subsidies as long as Korea continues to meet the obligations of the commitment.

With respect to the fourth allegation, USTR has decided not to initiate an investigation because the allegation concerns the behavior of private firms, not government action. Section 301 only permits action in response to the acts, policies or practices of a foreign government or instrumentality.

Finally, with respect to the fifth allegation, the USTR decided not to initiate an investigation on the grounds that the information provided in the petition was insufficient to serve as the basis for an investigation. The decision with respect to this allegation is without prejudice to the right of the petitioner to file a petition at such time as sufficient supporting information is available.

Upon request of the petitioner a public hearing has been scheduled for June 2, 1983 to consider the issues raised in the petition with respect to the allegations under investigation. The hearing will be held at the Office of the USTR, Room 403, 600 17th Street, NW., Washington, D.C. at 10:00 a.m.

Requests to present oral testimony must be submitted by May 28 and briefs accompanying oral testimony must be received no later than May 31. Written briefs from persons not wishing to present oral testimony should be received on or before June 2. Requests to present oral testimony as well as written submissions should conform to the requirements set forth in 15 CFR 2006.8 and 2006.9 and should be sent to the Chairman, Section 301 Committee, Room 223, 600 17th Street, NW., Washington, D.C. 20506.

In order to assure parties an opportunity to contest information provided by other interested parties in the written briefs and oral testimony, rebuttal briefs may be filed by any interested party in accordance with the requirements of 15 CFR 2006.8 no later than June 16.

Jeanne S. Archibald,
Chairman, Section 301 Committee.

[FR Doc. 83-12173 Filed 5-5-83; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Docket No. A83-19; Order No. 497]

Griswoldville, Massachusetts 01345, Richard R. Herzog, Petitioner; Notice and Order of Filing of Appeal

April 29, 1983.

On April 25, 1983, the Commission received an appeal letter from Richard R. Herzog (hereinafter "Petitioner"), concerning the United States Postal Service's decision to close the Griswoldville, Massachusetts post office. The appeal letter appears to request the review provided for by section 404(b) of the Postal Reorganization Act [39 U.S.C. 404(b)].¹

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "ensure that such persons will have an opportunity to present their views."² The petition requests that the decision to close the Griswoldville post office be reconsidered.

The Postal Reorganization Act states:

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal service be insured to residents of both urban and rural communities.³

Section 404(b)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close post offices. The effect on the community is also a mandatory consideration under section 404(b)(2)(A) of the Act.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the closing of post offices.⁴

Issues of law may become apparent when the Commission has had the opportunity to examine further the determination made by the Postal Service. The determination may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline

imposed by section 404(b)(5), the Postal Service is advised the Commission reserves the right to request a legal memorandum from the Service on any issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be filed within 20 days of the issuance, and a copy of the memorandum shall be served on the Petitioner by the Service.

In briefing the case or in filing any motion to dismiss for want of prosecution, in appropriate circumstances the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases,⁵ and none is being appointed. The Commission orders.

(A) The appeal letter from Richard R. Herzog of the Griswoldville post office be accepted as a petition for review pursuant to section 404(b) of the Act [39 U.S.C. section 404(b)].

(B) The Secretary of the Commission shall publish this Notice and Order in the Federal Register.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

**APPENDIX—Docket No. A83-19
Griswold, Massachusetts 01345**

April 25, 1983; Filing of Petition.

April 29, 1983; Notice and Order of Filing of Appeal.

May 10, 1983; Filing of Record by Postal Service [see 39 CFR 3001.113(a)].

May 18, 1983; Last day for filing of petitions to intervene [see 39 CFR 3001.111(b)].

May 25, 1983; Petitioner's Initial Brief [see 39 CFR 3001.115(a)].

June 9, 1983; Postal Service Answering Brief [see 39 CFR 3001.115(b)].

June 24, 1983; (1) Petitioner's Reply Brief should petitioner choose to file one [see 39 CFR 3001.115(c)]. (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument.

¹ In the Matter of Gresham, S.C., Route No. 1, Docket No. A78-1 (May 11, 1978).

August 23, 1983; Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 83-12166 Filed 5-5-83; 8:45 am]

BILLING CODE 7715-01-M

**PRESIDENTIAL COMMISSION FOR
THE GERMAN-AMERICAN
TRICENTENNIAL****Privacy Act and Freedom of
Information Act; Temporary
Procedures**

AGENCY: The Presidential Commission for the German-American Tricentennial.

ACTION: Notice of temporary procedures.

SUMMARY: In compliance with the Privacy Act of 1974, Pub. L. 93-579 and Freedom of Information Act as amended by Pub. L. 93-502 (5 U.S.C. 552), referred to as the "Acts", the Commission will make fullest possible disclosure of its information and identifiable records consistent with the Acts. The Commission proposes to use the administrative service staff support of the United States Information Agency to implement the Act. The procedures are designed to become effective June 6, 1983 and to terminate January 31, 1984 when the Commission expires. The public is requested to submit comments.

EFFECTIVE DATE: Comments are due June 6, 1983. The regulations will become effective on that date unless a notice to the contrary is published in the Federal Register.

ADDRESS: Comments should be addressed to: Director, Office of Public Liaison, USIA, 400 C Street SW., Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Director, Office of Public Liaison, USIA, 400 C Street SW., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The Presidential Commission on the German-American Tricentennial was established to plan, encourage, develop, and coordinate the commemoration of the German-American Tricentennial. In preparing its plans and carrying out its program, the Commission considers related plans and programs developed by state, local, private, and foreign groups.

It is the policy of the Commission that information about its operations, organization, procedures, and records be freely available to the public in accordance with the provisions of Pub. L. 93-579, the Privacy Act of 1974 (5 U.S.C. 552a) and Pub. L. 90-63, the Freedom of Information Act as amended by Pub. L. 93-502 (5 U.S.C. 552), referred

¹ 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-11. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

² 39 U.S.C. 404(b)(1).

³ 39 U.S.C. 101(b).

⁴ 42 FR 59079-85. (November 17, 1977). The Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

to as the "Acts". In compliance with the Acts, the Commission will make the fullest possible disclosure of its information and identifiable records consistent with the provisions of the Acts.

The Director of the United States Information Agency (USIA) is authorized to provide administrative services and staff support to the Commission, as necessary, for which reimbursement shall be made from funds of the Commission under section 686 of Title 31, United States Code, in such amounts as may be agreed upon by the Chairman of the Commission and the Director. Accordingly, the USIA will supply the Administrative services and staff for processing requests under the Acts. Therefore, all requests are to be made in accordance with the regulations published by the USIA at 22 CFR Part 505 and at 22 CFR Part 503.

The procedures shall become effective June 6, 1983 unless there is a notice to the contrary. The procedures shall apply to the Commission until January 31, 1984 upon which date the Commission will terminate.

Dated: May 3, 1983.

Victor B. Olason,

Coordinator, The Presidential Commission for the German-American Tricentennial.

[FR Doc. 83-12217 Filed 5-5-83; 8:45 am]

BILLING CODE 8230-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5456]

Avdon Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On January 21, 1983, a notice was published in the Federal Register (48 FR 2885) stating that Avdon Capital Corporation, 850 Avenue L, Brooklyn, New York 11230 had filed an Application with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 104.102 (1982)), for a license to operate as a Section 301(d) small business investment company.

Interested parties were given until the close of business on February 5, 1983, to submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, and having considered the Application and all other pertinent information, the SBA approved the issuance of License No. 02/02-5456 on April 21, 1983, to Avdon Capital Corporation, pursuant to Section 301(d)

of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 2, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-12194 Filed 5-5-83; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 01/01-0324]

Investors Technology Capital Corp.; Application for License To Operate as a Small Business Investment Company

An Application for a License to Operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Investors Technology Capital Corporation, 314 Flanders Road, East Lyme, Connecticut 0633, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1982).

The officers, directors and shareholders are as follows:

President, Director (17.96%),

Richard D. McHugh, 15 South Gate Lane, North Haven, Connecticut 06473

Executive Vice President, Director (15.29%)

John G. Arbour, 9 Wildwood Lane,

Westport, Connecticut 06880

Secretary, Director (17.96%)

Gary C. Granai, 202 Grassy Hill Road, East

Lyme, Connecticut 0633

Director (0.65%)

Robert M. Green, 24 Jannus Lane, Madison,

Connecticut 06443

Director (0.65%)

Joseph F. Bruno, 35 William Street,

Hamden, Connecticut 06514

Director (0.65%)

Philip C. Hopkins, Carroll Heights,

Norwich, Connecticut 06360

Director (0.65%)

Alphonse F. Spadaro, Jr., 101 Pease Road,

Woodbridge, Connecticut

The Applicant, a Connecticut corporation, will begin operations with \$500,000 paid-in capital and paid-in surplus, and will conduct its activities primarily in the State of Connecticut.

The Applicant intends to provide financial assistance to small business concerns for their growth, modernization and expansion and will render other management consulting services.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small

Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 2, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-12193 Filed 5-5-83; 8:45 am]

BILLING CODE 8025-01-M

[License No 10/10-118]

West Central Capital Corp.; Surrender of License

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1982)), West Central Capital Corporation, Suite 206, 440 Northlake Center, Dallas, Texas 75238 under the laws of the State of Texas has surrendered its License No. 10/10-0118 issued by SBA on August 27, 1962.

West Central Capital Corporation, has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of West Central Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 26, 1983

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-12195 Filed 5-5-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "Underground Camera, Inc."

AGENCY: Customs Service, Treasury.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Underground Camera, Inc." used by Underground Camera, Inc., a corporation organized under the laws of the State of Massachusetts, located at 369 Central Street, Foxboro, Massachusetts 02035.

The application states that the trade name is used in connection with photographic equipment, namely, cameras and lenses; photographic supplies, namely, photographic film and chemicals; and photographic accessories, namely, camera supports and illuminators. The trade name is applied to the goods in the United States. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or

arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before July 5, 1983.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; (202-566-5765).

Dated: May 3, 1983.

A. Piazza,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 83-12182 Filed 5-5-83; 8:45 am]

BILLING CODE 4620-02-M

VETERANS ADMINISTRATION

Availability of Reports of 38 U.S.C. 219 Program Evaluations

Notice is hereby given that the program evaluations of the Veterans Administration's Radiation Therapy Program and Nuclear Medicine Program have been completed.

Single copies of the Radiation Therapy Program evaluation and the Nuclear Medicine Program evaluation are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mrs. Lynn H. Covington, Director, Program Evaluation Service, Veterans Administration (074), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: May 2, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 83-12186 Filed 5-5-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 89

Friday, May 6, 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

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, May 19, 1983.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[5-642-83 Filed 5-4-83; 10:36 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, May 24, 1983.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Reparations—Proposed Rules
Enforcement Quarterly Budget Briefing
(closed)

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[5-641-83 Filed 5-4-83; 10:36 am]

BILLING CODE 6351-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Tuesday, May 10, 1983.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Kerosene Heaters Voluntary Standard: Meeting with UL

The Commission will meet with representatives of Underwriters' Laboratories to discuss in further detail the voluntary standard for kerosene heaters.

2. Vented Space Heaters: Meeting with Industry

The Commission will meet with manufacturers of vented space heaters to discuss the use of safety shut-off devices which would prevent carbon monoxide poisonings associated with improper installation and/or malfunctioning heaters.

(For a recorded message containing the latest agenda information, call 301-492-5709.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207; 301-492-6800.

[5-647-83 Filed 5-4-83; 3:37 pm]

BILLING CODE 6355-01-M

4

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 19267, April 28, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m. May 5, 1983.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

1. Fifty-Mile Container Rules.

[5-643-83 Filed 5-4-83; 11:01 am]

BILLING CODE 6730-01-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-83-22]

TIME AND DATE: 10 a.m., Tuesday, May 17, 1983.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
 - a. Certain processes for the manufacture of skinless sausage casings and resulting product (Docket No. 930).

5. Investigation 731-TA-130 (Chloropicrin from the People's Republic of China)—briefing and vote.

6. Investigation 751-TA-7 (Salmon Gill Fish Netting from Japan)—briefing and vote.

7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[3-640-83 Filed 5-4-83; 9:28 am]

BILLING CODE 7020-02-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-83-21]

TIME AND DATE: 10:00 a.m., Tuesday, May 10, 1983.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 104-TAA-18, 17, and 18 (Nonrubber Footwear from Brazil, India, and Spain)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[5-639-83 Filed 5-3-83; 4:19 pm]

BILLING CODE 7020-02-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held the following meeting on Sunday, May 1, 1983, at 7:30 p.m. at 450 5th Street, N.W., Washington, D.C., to consider the following item.

Regulatory matter regarding financial institution.

The Commissioners, their legal assistants and the Secretary of the Commission attended the closed meeting. Certain staff members who are responsible for the calendared matter were present.

The General Counsel of the Commission, or his designee, has

certified that, in his opinion, the item considered at the closed meeting was considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans, Longstreth and Treadway voted to consider the item listed for the closed meeting in closed session.

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: Michael Lefever at (202) 272-2468.

May 3, 1983.

[S-044-89 Filed 5-4-83; 11:17 am]

BILLING CODE 8010-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 9, 1983, at 450 5th Street, N.W., Washington, D.C.

Closed meetings will be held on Tuesday, May 10, 1983, at 10 a.m. and on Wednesday, May 11, 1983, following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans, Longstreth and Treadway voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 10, 1983, at 10 a.m., will be:

Access to investigative files by Federal, State, or self-regulatory authorities.

Formal orders of investigation.

Settlement of administrative proceeding of an enforcement nature.

Right to Financial Privacy Act.

Institution of administrative proceeding of an enforcement nature.

Regulatory matters bearing enforcement implications.

The subject matter of the closed meeting scheduled for Wednesday, May 11, 1983, following the 10 a.m. open meeting, will be:

Regulatory matter regarding financial institution.

The subject matter of the open meeting scheduled for Wednesday, May 11, 1983, at 10 a.m., will be:

1. Consideration of whether to propose for public comment amendments to Rule 206(3)-2 under the Investment Advisers Act of 1940 which would eliminate the requirement that an investment adviser obtain at least annually from a client written renewal of the client's consent to agency cross transactions. For further information, please contact Arthur E. Dinerman at (202) 272-3021.

2. Consideration of whether to order an evidentiary hearing on an application filed by Union-Investment-Gesellschaft m.b.h. ("Union-Investment"), a West German management company, on behalf of Unifonds, a West German mutual fund, requesting an order pursuant to Sections 6(c) and 7(d) of the Investment Company Act of 1940, permitting registration of Union-Investment under the Act so that it may sell Unifonds shares in the United States, and granting exemptions from many of the provisions of the Act. A hearing was requested on this application by the Investment Company Institute, the national association of the American mutual fund industry. For further information, please contact Brian M. Kaplowitz at (202) 272-3027.

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: Jerry Marlatt at (202) 272-2092.

May 3, 1983.

[S-645-83 Filed 5-4-83; 11:17 am]

BILLING CODE 8010-01-M

9

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1311]

TIME AND DATE: 10:15 a.m. (E.D.T.),
Wednesday, May 11, 1983.

PLACE: TVA West Tower Auditorium,
400 West Summit Hill Drive, Knoxville,
Tennessee.

STATUS: Open.

AGENDA ITEM: Approval of minutes of meetings held on April 27, 1983.

A—Project Authorizations

A1. Project Authorization No. 3655—
Construction of 161-kV transmission
facilities and substation for Shell Oil
Company in north Langford, Mississippi.

B—Purchase Awards

B1. Requisition 67—Purchase of term coal
for Johnsonville Steam Plant.

C—Power Items

C1. Adoption of supplemental resolution
authorizing 1983 Series C power bonds.

C2. Resolution authorizing the Chairman
and other executive officers to take
further action relating to issuance and
sale of 1983 Series C power bonds.

* C3. Letter agreement with Big Rivers
Electric Corporation covering
arrangements for increase in the amount
of power which TVA wheels for Big
Rivers under an existing agreement.

D—Personnel Items

D1. Supplement to personal services
contract with Gilbert Associates,
Incorporated, Reading, Pennsylvania, for
architectural, engineering, and design
services, requested by the Office of
Engineering Design and Construction.

E—Real Property Transactions

E1. Grant of permanent easement to the
city of Franklin, Tennessee, for public
recreation purposes, affecting
approximately 1.0 acre of TVA
phosphate land located in Williamson
County, Tennessee—Tract No. XTPS-
13RE.

E2. Grant of permanent easement to Bear
Creek Development Authority for
sewerage facilities, affecting
approximately 0.46 acre of Upper Bear
Creek Reservoir land located in Winston
County, Alabama—Tract No. XTBCUR-
3S.

E3. Resolution designating approximately
24 acres of Tims Ford Reservoir land and
appurtenant use rights, located in
Franklin County, Tennessee, as surplus
and for sale at public auction—Tract No.
XTMFR-13.

F—Unclassified

* Item approved by individual Board members.
This would give formal ratification to the Board's
action.

F1. Agreement between TVA and Southeast Oklahoma Public Facilities Authority for the purpose of furthering economic development in the southeast Oklahoma area.

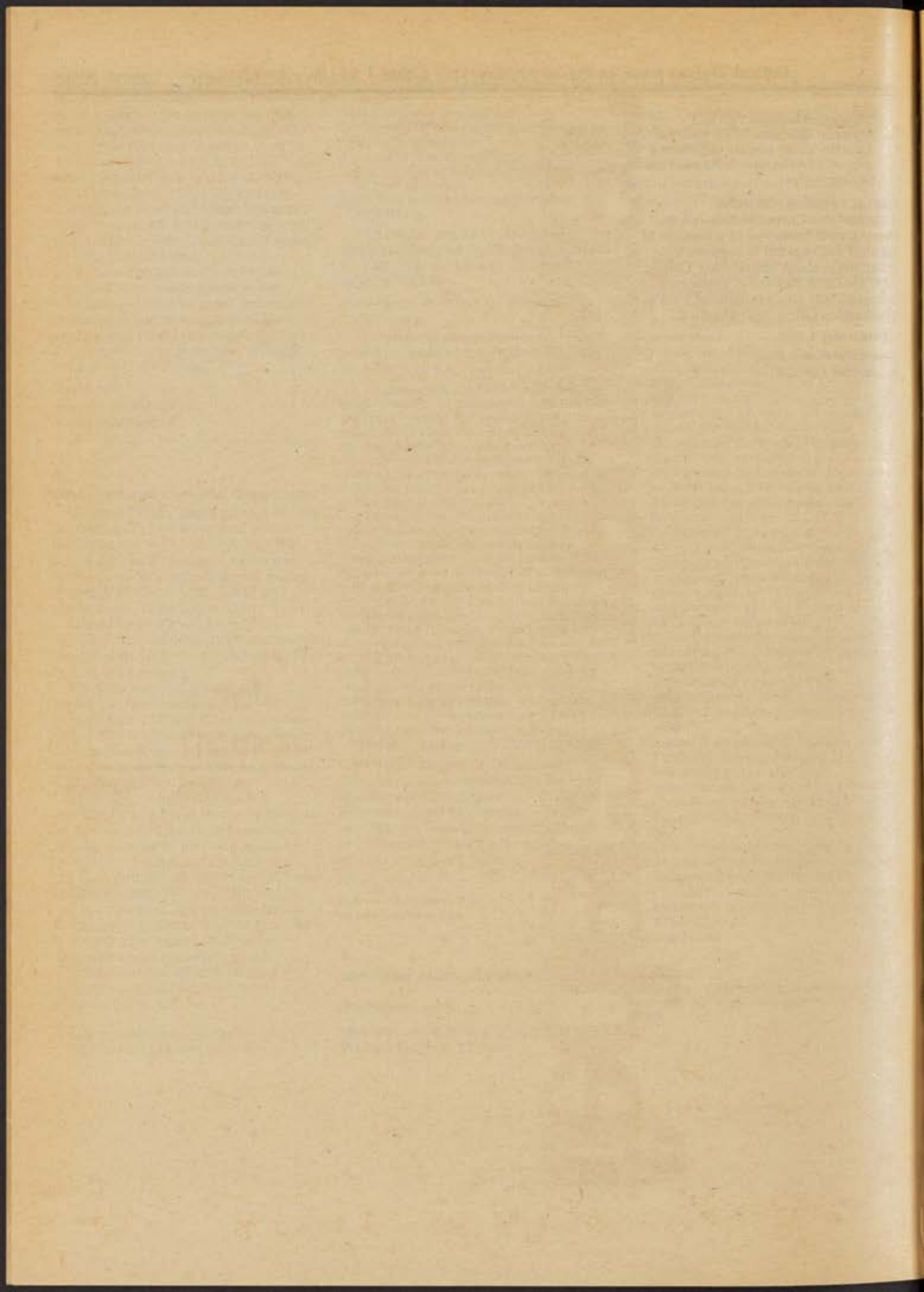
CONTACT PERSON FOR MORE

INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 4, 1983.

[5-646-83 Filed 4-5-83; 12:20 pm]

BILLING CODE 8120-01-M



federal register

**Friday
May 6, 1983**

Part II

Small Business Administration

**Small Business Size Standards: Proposed
Rule**

SMALL BUSINESS ADMINISTRATION**13 CFR Part 121****Small Business Size Standards;
Revision****AGENCY:** Small Business Administration.**ACTION:** Proposed rule.

SUMMARY: SBA is proposing to amend its size standards regulations. These changes are being proposed to deal with the effects of inflation, to address long-standing problems of defining small business in certain industries, to provide one set of standards for both the procurement and financial assistance programs, and to improve the readability of the regulations. This action is intended to update the size standards and clarify the regulations. In certain instances, however, existent regulations have been left in place.

DATE: Written comments must be submitted on or before July 5, 1983.

ADDRESS: Submit written comments to: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas, (202) 653-6373.

SUPPLEMENTARY INFORMATION:**Chronology**

This is the fifth notice to appear in the Federal Register since March of 1980, concerning SBA's intent to comprehensively revise its size standards. Previous notices were: (1) Advance Notice, March 10, 1980; 45 FR 15442; (2) Notice of Public Hearings, April 8, 1980, 45 FR 23704; (3) Public Notice, September 10, 1980, 45 FR 59587; (4) Second Advance Notice, May 3, 1982, 47 FR 18992.

Summary of Notices

SBA's first advance notice of proposed rulemaking contained size standards based primarily on the industrial structure of each industry. Public and Federal Government agency comments had not been solicited prior to that time. In setting these size standards, SBA categorized industries by the degree of economic competition existing within the industry. Industries were grouped into either a competitive, mixed, or concentrated category and relatively high size standards were assigned to the mixed and, particularly, to the concentrated categories. Lower standards were proposed for competitive industries. Size standards for this notice were primarily stated in terms of number of employees and ranged from 15 to 2500 employees.

In response to this notice, SBA received over 1500 public and agency comments, both in the form of written correspondence and testimony at public hearings. These comments were largely supportive of existing SBA size standards rather than the proposed changes and were primarily directed at 200 of a total of over 800 different industries covered in the proposal. There was little opposition to using a single size standard for SBA programs, and to the general use of employee size standards.

As a result of these comments and the fact that the Nation was in an environment of budgetary constraints, SBA, in the second advance notice (1982), shifted its methodology away from the first advance notice's emphasis on economic analysis and industry competition. SBA focused more heavily on agency program needs and the desires of the public as shown by the comments. Moreover, SBA, as a matter of policy, proposed to lower the size standards thus concentrating SBA resources on smaller firms in the belief that those firms have the greatest needs. As a result, proposed size standards in this second notice ranged from 25 to 500 employees.

SBA received over 500 comments to the second notice from the public and Government agencies. The majority of them were negative.

In the rule that SBA is presently proposing, SBA is attempting to reconcile the various opinions presented by the commentators to each of the advance notices. Thus, the Agency's position reflects both the comments of the private sector and the opinions of the Federal agencies through the prior notices. The essential features of this revision are to propose that: (1) the existing procurement size standards (both receipts and employee size standards) be used as a base for uniform agency size standards; (2) size standards which are currently expressed in terms of annual receipts (chiefly nonmanufacturing industries), remain in annual receipts and be increased for inflation; (3) size standards currently expressed in number of employees (chiefly manufacturing) remain the same; (4) the language of the size standards regulations is revised to reflect these changes and to improve the readability of the regulation.

In effect, virtually no size standards will be lower than the current size standard (with a few exceptions where specific industry problems exist) and many will be higher under this proposal. This particular approach is largely based on the belief that the set of size standards presently in use is logically

based, considering the development and general public acceptability of the procurement size standards, the industrial structure of industries, and the needs of Federal programs which have utilized the existent standards for a number of years.

While major changes have occurred in SBA's size standards revision effort, two considerations have remained constant and have been continued over all three notices: (1) size standards are based on 4-digit Standard Industrial Code rather than a combination of SIC categories and numerous product or activity descriptions, which is presently the case; (2) there is a single size standard for each industry that is applicable to all SBA programs. This contrasts with the present variation in size standards among various SBA programs which has traditionally existed. In the past, this variation has resulted in certain firms being eligible for some programs, but ineligible for others, based on size. This new approach aids in providing more uniform SBA size standards applicable to all SBA programs.

Reason for This Proposed Rule

First, as discussed in more detail below, the comments to the advance notices proposing major increases or reductions in size standards for particular industries have been largely unfavorable. SBA highly values the process of public comment and accordingly has adjusted the standards expressed in this notice.

Second, the size of firm eligible to bid on procurements set aside for exclusive small business bidding is of great concern for the Government's procuring agencies, especially the Department of Defense. Since prime purposes of procurement assistance programs are to assure continuation and availability of competition, and to expand the mobilization base, standards for SBA assistance must be sufficiently high to involve firms with substantive capability and sophistication in the procurement process. This proposal is intended to address that concern by not lowering any size standards, and increasing others.

In addition, as a result of comments from the public and procuring agencies, SBA has realized that certain industries and activities within industries are especially sensitive to the size standard used for set-asides. Many size standards in this proposal have been adjusted to accommodate these circumstances.

Third, a compelling reason exists for continuation of the existing size standards, with adjustments for inflation. Many private sector

commentors and procuring agencies have indicated their preference for the current procurement size standards. A number of businesses and procuring agencies have been able to plan and operate their activities under the existing size standards. Based on their historical success with using these size standards, they are reluctant to accept any change other than an increase for inflation. SBA has a strong interest in facilitating the administration of the small business set-aside program, and has therefore sought to minimize disruption to this program.

Fourth, inflation is a well-known economic phenomenon by which the real value of any quantity measured in dollars becomes diminished. In recognition of this, SBA, in 1975, made a general adjustment to receipts size standards for inflation and is proposing to do so again. The intent of this proposal is to give the size standards a real value equivalent to that which existed in 1975, or whenever a receipts size standard may have been subsequently established. Firms have been losing SBA eligibility due to inflation, and an inflation adjustment will help to remedy this.

Fifth, the designation of the SBA size standards more specifically in terms of SIC Manual industry classifications has several implications. It follows the explicit statutory intent of Section 3 of the Small Business Act that the SBA size standards vary from industry to industry. It conforms the SBA industry definitions with general governmentwide, business, and economic industry categories, rather than specialized SBA or procurement groupings. Furthermore, SBA's Size Appeals Board precedents have utilized SIC categories in interpreting the present regulation in many instances. While the proposed revision increases the number of size standards, since almost every 4-digit SIC industry would have a separate size standard, the use of SIC industry categories is a common and acceptable procedure.

Firms generally know their SIC industry category, since they may use it for various Government and non-Government reporting purposes. In the procurement area, the designation of size standards more specifically in terms of SIC codes could reduce disputes concerning the proper classification of particular procurements, especially where the item or service being procured is similar to commercial items or services. Even where the item may be specialized, use of the SIC categories in the required SBA size standard can reduce disputes by establishing more

definite criteria. The use of uniform SIC industry size standards for the various SBA programs also facilitates the combined usage and interrelation of SBA programs, since firms would be likely to have the same size eligibility for various financial and procurement programs.

Since the SBA size standards are used not only in SBA size determinations, but also by private firms and other agencies for procurement, regulatory, and assistance purposes, stating the size standards in terms of the commonly used SIC industry categories should aid their acceptance and wider use in aid of small business. For example, the Regulatory Flexibility Act indicates that other agencies should generally follow the SBA size standards in considering the effects of their regulations or proposed regulations on small business. This would be facilitated if SBA size standards are established on a uniform SIC Manual industry classification basis.

Sixth, SBA is also proposing to eliminate the use of the residual size standard of 500 employees where no size standard is specified for procurement purposes. This would be replaced by an "ad hoc" size standard authority, similar to what is currently used for financial purposes. The existing residual and ad hoc regulations are presently found in 13 CFR Part 121.3-8 and 121.3-10. The proposed ad hoc authority may be found in § 121.10(b). Since virtually all industries involved in SBA programs are proposed to have a size standard, it is anticipated that the ad hoc provision will be rarely used.

Comments

In response to SBA's second advance notice a total of 516 respondents generated over 1,000 written comments. Of the individual respondents, 481 were from the public while 35 were from Federal agencies and departments. This latest response was down substantially from the first advance notice, which included 1,124 individual respondents. However, the figure of over 500 responses indicated that the public was still concerned with the potential impact of the proposed changes. The responses were critical of the proposed changes in the level of industry size standards by approximately a 4-to-1 margin. While numerous criticisms were voiced, a number of commentors stated similar objections. The most numerous comments included the following: (1) Many felt that the economic conditions of their particular industry argued for a different size standard. In the majority of cases the commentor wanted a higher size standard; (2) a number of

commentors were concerned with the lack of distinction between full-time and part-time employees in the second notice. Many felt that this was unfair to firms, especially in the service sector, which employs part-time workers, since part-time and full-time workers are counted equally for size standard purposes; (3) in some industries commentors stated that the standard industrial code was unnecessarily broad in that it included subindustries with different Federal procurement markets. Commentors believed that these subindustries should be separated with different, usually higher, size standards; (4) a number of commentors said that the size standard which was suggested in the second advance notice would be disadvantageous to the procurement set-aside program. Frequently, commentors claimed that the set-aside program could not attract competent bidders in industries with a lower size standard; (5) some commentors were strongly critical of the decision to have a maximum size standard of 500 employees. They argued that such a maximum was arbitrary and failed to recognize that in many industries this would result in an insufficient number of bidders on small business set-asides, and would ignore competitive circumstances; (6) many commentors urged that SBA should strive for continuity and that the employee-based size standards should be retained at their present level. Many of these commentors felt, however, that the size standards based on gross receipts should be revised for inflation to maintain real measures of size unaffected by price trends.

A pattern which is readily apparent from the comments is that a few industries are responsible for most of the comments. Almost half of the total comments, for example, focus on the following 10 industries:
Engineering
Dredging
General Construction (Except Dredging)
Janitorial Services
Shipbuilding and Ship Repair
Research and Development Laboratories
Oil Refining
Base Maintenance
Computer Programming and Data Processing
Special Trade Construction

These industries, and a few others with procurement-related problems, received special attention from the SBA size standards staff when reviewing the public response.

SBA has given considerable weight to the over 2,000 comments received in response to the two advance notices.

The public comment procedure, however, is not regarded as a letter-writing contest. The Office of the Federal Register has pointed out:¹

In rulemaking, every voice is important. Agencies cannot count the number of comments received as if they were votes. An agency must consider each issue and use its expertise to reach a solution that meets the letter and spirit of the law.

Nonetheless, SBA regards comments as an informal indicator of the proposed rules' impact.

Numerous commentors to SBA's March 10, 1980, and May 3, 1982, advance notices stated that the proposed changes would adversely affect them or a small group of firms within their industry. There are some individual firms which may be adversely affected by their own loss or a competitor's gain in eligibility. However, SBA anticipates no adverse impact on any industry as a whole or on the economy if the proposed size standards are implemented. One should not confuse the legitimate, but somewhat self-serving, concerns of a comparatively small number of firms with an adverse impact on an entire industry, region, or the economy.

Methodology for Setting Size Standards

As already discussed, the method of setting size standards in the manufacturing industries is simply to retain the present procurement size standards as expressed in employees unless comments have been received which indicate a problem. A similar approach applies to the nonmanufacturing industries. In these, however, an inflationary adjustment is made in an attempt to put the size standards on a real dollar equivalent to the time of the last general adjustment, usually 1975.

The technique for adjusting for inflation focuses on a single measure—the GNP deflator. This measure is used in the National Income Accounts to calculate GNP adjusted for inflation (real GNP). This measure is more sophisticated than other measures of inflation in both method and coverage. It includes the prices of all goods and services in the economy whether paid by consumers, businesses, or the public sector. Thus, it is the most comprehensive price index since it includes all sectors of the economy.

The appropriate adjustment period will vary from industry to industry depending on the year of its last adjustment for inflation. In the majority

of nonmanufacturing industries the last adjustment occurred in 1975 based on 1974 data. Thus the deflator for 1974 of 115 (1972=100) is compared with the estimated deflator of 208 for the third quarter of 1982. The total change of +81 percent is then applied to those size standards last adjusted in 1975 to calculate the proposed revisions. In instances where size standards have been set after 1974, the adjustments are commensurately less to reflect the shorter period in which inflation occurred.

Discussion of Provisions of the Proposed Part 121

Not all sections of this Part 121 reflect a proposed change. Only §§ 121.1, 121.2, 121.4, 121.5, 121.7, and 121.10 represent changes to the present regulations. All other sections are merely reproduced as they now exist or slightly amended for clarity. Revisions to these §§ 121.3, 121.6, 121.8, 121.9, and 121.11, may be proposed for change in the future.

This proposal revises the format of the Part 121 size regulation due to the consolidation of the size standards. The general SIC industry size standards are set forth in § 121.2, along with the definition of employees (average for the prior 12 months) and the definition of receipts (average of the most recent 3 completed fiscal years). Section 121.3 contains certain general definitions, including the definition of affiliation (the size of affiliates must be added to the size of the firm for size standard purposes).

Section 121.4 consolidates provisions relating to the application of the size standards to SBA financial assistance programs and to the minority small business and capital ownership program (including 8(a) contracts). This section notes that the applicable size standard is that of the primary activity of the firm (including affiliates). The section retains the existing general alternate small business definition for small business investment companies, development companies, and pollution bond guarantees. The existing 25 percent increase in the size standards for financial assistance when it is to be used by the firm in a labor surplus or redevelopment area is retained (this 25 percent increase does not apply to 8(a) assistance or the surety bond guarantee program). The geographic size differentials for firms in Alaska, Hawaii, and Puerto Rico are not retained.

The proposed regulation provides that size determinations for 8(a) contracting purposes would be made by SBA if necessary for program eligibility purposes or for the award of particular 8(a) contracts. The present provision in

the regulation (§ 121.3-17) indicating that size for 8(a) purposes is only determined on a general program basis is deleted.

The procedural provisions of Part 124 of the SBA regulations (minority small business and capital ownership development assistance) are being revised as part of a general revision of Part 124 which is to be published in the near future as a proposed rule. That proposal will include additional procedures regarding 8(a) size certifications and size determinations. 8(a) size determinations will be governed by those regulations, rather than by the procurement size determination procedures of Part 121.

When bidding on regular (non-8(a)) small business set-asides, 8(a) firms are subject to the same size standards and size protest procedures as other bidders.

Section 121.5 contains provisions relating to size eligibility for set-aside procurements and for subcontracting. Firms, including any affiliates must meet the size standard for the procurement (which is designated in the solicitation). The procurement size section provides that procurements are classified in the most appropriate SIC industry size standard category, giving consideration to the descriptions in the regulation and the SIC Manual, the product or service description in the solicitation, and the attachments thereto, the relative value of items in the procurement and the principal nature of the procurement. These factors presently are considered under the SBA size regulations and Size Appeals Board procedures.

The size standard for bidders not manufacturing the product being supplied for a small business set-aside is the appropriate wholesale size standard for the item being supplied, rather than the general 500 employee nonmanufacturer size standard of the present regulation. On set-aside procurements other than those under "small purchase procedures," such nonmanufacturer must furnish the product of a small manufacturer, manufactured or produced in the United States. For purposes of Certificates of Competency on unrestricted procurements, nonmanufacturers must meet the appropriate wholesale size standard.

Section 121.5 also contains size provisions relating to subcontracts on Government procurements under Section 8(d) of the Small Business Act. That section of the Act encourages Government prime contractors to subcontract to small businesses. The subcontracting size standard generally is the industry size standard for the

¹ The Federal Register, What It Is and How to Use It, National Archives and Records Service, GSA, Washington, D.C., 1980, p. 106.

service or item which the subcontractor is providing to the prime contractor. However, on subcontracts pertaining to "small purchase procedures," this proposal provides (as under the present regulation) that the subcontractor, including any affiliates, must have no more than 500 employees.

The proposed regulation also sets forth procedures for protests and size determinations. It is anticipated that other amendments will be proposed at a later time on size procedures and affiliation.

In proposed § 121.7, SBA is proposing a size standard of 500 employees for purposes of award of any funding agreement under the Small Business Innovation Development (SBID) Act of 1982 (Pub. L. 97-219, 15 U.S.C. 838(e)-(k)). The 500 employee standard is the standard currently applicable for research and development (R&D). Although the current definition of R&D is somewhat narrower than the R&D definition included in the SBID Act, SBA believes a uniform standard of 500 employees is most appropriate for this program.

The SBID Act requires certain Federal departments and agencies to set aside a portion of their R&D budgets to fund Small Business Innovation Research (SBIR) programs. Such programs are to adopt uniform, simplified, and standardized procedures to facilitate the participation of small for profit R&D firms in the programs. The legislative history of the SBID Act indicates that Congress intended that R&D firms having less than 500 employees participate in this program. In the judgment of the SBA, the goals and purpose of the SBID Act will be best served by adopting a size standard of 500 employees for participants in SBIR programs regardless of industry.

Proposed § 121.7 also specifies that the 500 employee size standard applies to all funding agreements under the SBID Act. "Funding agreement" is defined in the SBID Act as "any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, development or research work funded in whole or in part by the Federal Government." SBA proposes a uniform size standard for all types of

funding agreements of the SBID Act for uniformity among SBIR programs.

Summary of Results

The size standards in manufacturing, mining, and transportation are presently stated in terms of "number of employees" for purposes of the SBA procurement program. Under this proposed rule the size standards in these industries for the procurement program would be retained (unless problems have been noted). All procurement size standards will also apply to the SBA financial assistance programs. For wholesale industries, the current procurement standard based on employees would be replaced with a gross receipt size standard to be used for all SBA programs. Sufficient problems have been identified in the following four areas for the SBA to areas for the SBA to propose changing the pertinent size standard from the present procurement size standard.

SIC	Industry	Current procurement size standard (employees)	Proposed standard (million)
4131	Inter-city and rural highway passenger transportation	500	3.5
4141	Local passenger transportation charter service	500	3.5
4142	Passenger transportation charter service, except local	500	3.5
50-51	Wholesale trade	500	(*)

* \$15 million-\$35 million depending on the industry.

The size standards in construction, retail, and services are presently stated in gross receipts. Under the new approach the size standard for both the procurement and financial programs will be based on the present procurement size standard increased for inflation unless problems are known to exist. In the majority of industries in which a number of comments have been received pursuant to the Advance Notices, the inflation adjustment will accommodate the views of the commentators including the procuring agencies. However, in a few industries, specific problems are not resolved through the inflationary adjustment. These industries include the following:

SIC	Industry	Current procurement size standard (Million)	Proposed standard (Million)
1629	Heavy construction (except dredging)	\$12.0	\$21.5
1029	Dredging component	9.5	9.5
5812	Eating places (except food services)	(*)	3.5
5812	Food service component (industrial and institutional food service activities)	5.5	10.0
6911	Architectural and surveying services	2.0	3.5
8911	Engineering services (except for military and aerospace equipment and for military weapons)	7.5	3.5
8911	Engineering services for military and aerospace equipment and for military weapons (except marine engineering)	7.5	13.5
8911	Naval architecture and marine engineering services	9.0	11.0
8931 *	Accounting and auditing	2.0	5.0
8931 *	Bookkeeping and billing services	2.0	3.5

* None.

* This proposed rule supersedes the proposed rule of November 2, 1982 (47 FR 49664), which proposed a size standard revision of 100 employees for the accounting, auditing, and bookkeeping industry (SIC-8931).

In the Small Business Investment Company, development company, and pollution bond programs the alternate size standard of \$6 million in net worth and average net income after Federal income taxes of \$2 million will be retained.

It should be reemphasized that the vast majority of proposed adjustments in construction, retail, and services were simply the result of the inflation increase applied to the present procurement receipts size standards. These adjustments and the decision to retain the present employee procurement size standards in the manufacturing industries have resulted in size standard ranges which are sharply different from those proposed during the first and second notices. As presently proposed, these ranges are as follows:

Agriculture: \$100,000-\$1.0 million; 25-30 employees
Mining: 500 employees
Construction: \$9.0 million-\$21 million
Manufacturing: 500-1500 employees
Transportation: \$3.5-\$20.0 million; 500-1500 employees
Wholesale: \$15 million-\$35 million
Retail: \$3.5 million-\$13.5 million
Services: \$2.5 million-\$14.5 million

Compliance With Regulatory Flexibility Act and Executive Order 12291

General

SBA considers that this proposed rule, if promulgated in final form, will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. In addition, this proposed rule, if promulgated in final form, would constitute a major rule for the purpose of E.O. 12291.

We have indicated above in this supplementary material a description of the reasons why this action is being considered, a statement of the reasons for and objectives of this proposal, and a description of the significant alternatives to this proposal. The legal basis for this proposal is Sections 3 and 5(b) of the Small Business Act, 15 U.S.C. 632 and 634(b).

Immediately below we have set forth an Economic Analysis of this proposal which provides, among other things, a description and estimate of the number of small entities to which the proposal would apply, an identification of overlapping and conflicting Federal rules, a description of the benefits and costs associated with the proposal and those likely to receive such benefits and costs.

Economic Analysis.

The intent of this proposed rule is to unify all size standards, regardless of the program to which they apply, at the level currently used for SBA's procurement set-aside program.³ In addition, those size standards presently expressed in dollars, basically those for the nonmanufacturing industries, are proposed to be increased for inflation. Finally, a relatively small number of size standards would be changed due to special circumstances.

In a dynamic \$3 trillion GNP economy, the fortunes of small businesses are influenced by a great variety of economic and noneconomic forces. When one considers business cycles, changing markets, taxes, fiscal and monetary policies, technological change, foreign trade, regulations, finance, and many other influences on over 7 million small businesses, the significance of size standards can be viewed as quite modest. The basic purpose of this portion of the explanatory material is to estimate the economic impact of the proposed size standards changes on firms which use, or are likely to use, SBA assistance.

The most important consideration to keep in mind in evaluating size standards changes is the fact that only a tiny fraction of the nation's small businesses are ever in a position to use SBA assistance and, thus, be subject to a size standards test. SBA's present size standards cover or define almost 99 percent of all firms as small. Under this proposal and previous SBA proposals, the coverage has not varied by more than 1 or 2 percentage points. While the proposed changes are of broad interest to small businesses, this proposal is principally followed by those relatively few businesses which are specifically interested in SBA programs.

An assumption behind the Regulatory Flexibility Act (RFA) and Executive Order 12291 is that regulatory requirements imposed equally on all firms in an industry may result in a disproportionately heavy burden on small firms. Small businesses have repeatedly pointed out that uniform application of the same regulations to them and to larger firms may produce certain inequities. Regulatory requirements which are mandatory require firms to keep records, make reports, and alter their way of doing business in complying with provision of new rules. These burdens and costs may be disproportionately heavier on small firms than on large firms.

A particular type of regulatory impact envisioned by the RFA and the Executive Order does not apply to the SBA size standard definitions of small business. SBA size standards in and of themselves do not require any firm to do anything because participation in SBA programs is entirely voluntary. The purpose of the RFA is to require the Government to consider special treatment for small business to mitigate inequities. Size standards, however, define what a small business is. They are definitions and do not themselves regulate or control business behavior. Thus, size standards do not constitute a regulatory burden in the typical sense.

The next portion of this statement will follow the outline suggested in the SBA pamphlet, "The Regulatory Flexibility Act" (Office of Advocacy, 1980), for the purpose of presenting an economic analysis of this proposal.

Economic Impact Analysis

First, the demographic impact of this proposal is the incremental number of firms affected by the proposed change. SBA estimates that about 39,000 additional firms, excluding farms, will be considered small as a result of the proposed rule. The inclusion of these firms is necessary, the Agency believes, to restore or maintain parity with the

firms defined as small business in 1975, the date of the last general size standards adjustment. Details of this estimate are in Table 2 below. As explained above, since only a tiny fraction of small businesses are interested in SBA assistance, the actual impact will be much smaller than the potential impact indicated by the 39,000 firm estimate. If 5 percent of these newly eligible firms were interested in SBA assistance, then the net demographic effect would be 1,950 additional firms receiving SBA assistance. Out of a total small business universe of over 5 million firms, the additional firms represent four one-hundredths of 1 percent or four small businesses out of every 10,000.

Of its three major programs—financial assistance, procurement assistance, and management assistance—SBA estimates that no more than 5 percent of the Nation's small businesses use these programs. This is a crude estimate because only in its financial assistance program does SBA have an exact count of the number of participating firms. For the procurement and management assistance programs, however, indirect indicators must be employed.

For financial assistance, SBA's major program is the 7(a) bank loan guarantee program. In FY 1982, there were 12,016 guarantees of this type. Direct, Economic Opportunity Loans, and Local Development Loans together accounted for 3,185 additional loans for a grand total of 15,201 firms in the various loan programs.

Data do not exist for the number of firms receiving set-asides, although, in FY 1981, 2,377,000 prime contract actions (over \$10,000 value) were set aside.⁴ Since one firm may receive more than one contract and since the number of contract actions by far exceeds the number of actual contracts,⁵ the number of firms involved in set-asides is a fraction of the 2.4 million contract actions, and this is probably also true of subcontracts. The number of referrals for Certificates of Competency is substantially less than either of the other program potentials.

SBA's Procurement Automated Source System, PASS, lists 71,000 firms. This is a list of small firms interested in doing Government work, not a list of those actually performing it. The number of firms receiving contracts, therefore, is probably closer to 71,000 rather than 2.4 million; 71,000 is 2 percent of the 3.7 million firms currently defined as small

³ Federal Procurement Data Center Special Analysis #4.3B, pg. 1, for FY 1981.

⁴ A contract action may include the initial contract, add-ons, change orders, etc.

⁵ The size standards are described in 13 CFR 121.3-8.

for SBA procurement purposes (see Table 1).

SBA's management assistance data are recorded by number of persons helped through courses, seminars, workshops, SCORE, ACE, and so on. The number of firms is not tracked and, in any case, is far fewer than the number of persons assisted. Furthermore, when a firm rather than an individual makes use of management

assistance, the smallest firms tend to use the assistance, and so it is unlikely that many firms near the size standard would use this form of assistance. In FY 1982, 358,000 people attended management assistance courses and 191,000 received counseling.

Some examples of the estimated impact in representative industries are as follows:

SIC	Name	Total No. firms	Present (small)	Proposed (small)	Change	Change as percent present (small)
1721	Construction painting	27,311	27,133	27,285	+152	0.56
5411	Retail grocery	91,902	89,850	90,703	+853	0.95
7538	Service auto repair	39,884	39,490	39,565	+75	0.19

The second topic for analysis is *economic cost analysis*. These types of costs are inapplicable in the case of size standards. Size standards impose no reporting or recordkeeping costs by themselves. In the event that other Federal agencies decide to use SBA's size standards for regulatory purposes, any economic costs involved would be due to that agency's regulations themselves, not to the size standard.*

The *competitive effects* of size standards differ from those normally associated with regulations such as the impact on prices of goods and services, profits, growth, innovation, mergers, and foreign trade. Size standards are not anticipated to have any appreciable effect on these factors.

The aspect of competition upon which the proposed changes may have an effect is in regarding competition as business rivalry. For example, by increasing the size standard and thereby the number of eligible firms in an industry, it could work to the detriment of smaller firms by diluting SBA's fixed resources. A somewhat larger firm, compared to the current size standards may win a set-aside bid or a loan from which it previously has been excluded.

The *aggregated impact* of this proposal, which includes forecasts of firm failures, employment losses, community impact, and the effect on economic concentration is not significant.

The likelihood of firm failures and associated unemployment is very remote as a result of SBA's proposed changes. There may be some individual firms (certainly not industries) which have become overly dependent on continued SBA assistance so that a

change of eligibility for set-asides would adversely affect them.

This effect may occur in industries where size standards have been increased. With more firms eligible to bid on procurement set-asides, the somewhat larger newly eligible firms may win bids over other smaller businesses. Again, any adverse effect would occur only to firms which have become so dependent on SBA aid that they cannot exist without it.

This proposed rule generally will affect the four sectors of business in which annual receipts size standards are used: construction, wholesale, retail, and services. Based on data from the 1977 Economic Census, the latest available, SBA estimates that this proposed rule will result in additional firms being classified as small. These firms, SBA believes, are not larger in terms of employees or physical output, only in terms of receipts due to inflation. This estimate is detailed in Table 2.

Due to the fact that a very small percentage of all small businesses are concerned with SBA assistance, the number of firms actually affected will be considerably less than 39,000. It is not possible to tell in advance what this number would be, especially since there is no way to determine how many firms would use SBA assistance if the proposed rule is adopted.

Size standards are primarily used for SBA programs and are designed with this purpose in mind. They are not intended as an all-purpose definition of small business, or as appropriate definitions for non-SBA purposes. In the SBA Loan Guarantee program, 7(a), the vast majority of loans go to firms with fewer than 19 employees. Since \$2.5 million is the lowest proposed size standard (with the exception of agriculture), firms smaller than this size

are unaffected.* In FY 1982, the most recent year for such data, 82 percent of SBA loans were to firms with fewer than 19 employees.

Also, in the most recent fiscal year, SBA participated in approximately 12,000 guaranteed loans. While there are incomplete statistics on the total number of loans to small business economy-wide, SBA loans represent a tiny proportion of total small business loans. The normal commercial banking system finances the vast majority of loans to small business. Thus, SBA's presence in total small business financing is quite small.

SBA estimates that on average, 39,000 firms would generate 109 SBA loans. However, since the newly eligible firms will be larger than the currently eligible firms, they most likely will not be interested in SBA loans. This is because the smallest small businesses generate the bulk of SBA loans (85 percent of guarantee loans are to firms with fewer than 19 employees). Thus, the number of new loans generated by the proposed change are estimated to be considerably less than 109. In any case, SBA's lending authority is fixed by Congress, and the total dollars loaned cannot change through a change in the size standards. The economic impact of this proposed rule on small business lending will, therefore, be marginal.

SBA's second major form of small business assistance is the procurement set-aside program. The question raised by this proposed rule in terms of impact is: How many additional firms will be eligible to bid for small business set-asides? at the most, 22,553 firms will become newly eligible.* While there are no data on the total number of firms which bid on set-asides, it generally is believed that only a small percentage of small businesses are interested in doing work for the Government. For this reason, of the 22,553 firms, it is likely that only a few hundred might become involved in Government procurement at the prime or subcontract level.

Further, it is impossible to predict which firms or group of firms will gain or lose benefits of SBA procurement assistance. Even without any change in size standards, the group of firms participating in Government contracts this year will differ in an unpredictable

* For retail in general, 55 employees is the approximate equivalent of \$2.5 million in annual sales. For services, 65 employees is the approximate equivalent of \$2.5 million in annual sales.

* From Table 2, total firms changing status minus 13,180 retail firms (for which set-asides are not applicable) and minus 2,964 manufacturing firms whose procurement eligibility remains unchanged.

* The use of SBA size standards for regulatory purposes is optional under the Regulatory Flexibility Act (§ 601(3)).

way from the group which participated last year.

What impact will the presence of a few hundred additional firms have on the procurement assistance program? While there are several million firms eligible now, only a small percentage participate in Government procurement. The practical effect of this proposed rule, although not quantifiable, may be in having one or two additional firms offering on a particular contract or subcontract. For some contracts, then, there might be perhaps eight bidders rather than seven, with no way of knowing whether the newly designated small firm would even win the contract or how it would affect the bid price of other bidders.

In the procurement assistance program the net effect is actually zero. For example, if a firm currently eligible to bid on a set-aside is too large under the proposed size standards, then a firm below the new standard will get the contract and perform the work. One firm's loss is the other's gain, and the net result is zero.

A third possible area of impact is the extramural use of size standards, that is, their use for other than SBA purposes. These may include Federal, other government, and private sector adaptation of size standards for any number of purposes. SBA usually has no knowledge of the extramural use of its size standards and, thus, this impact is unknown to SBA but may be known to the specific agency which uses small business definitions. The use of SBA size standards as a small business definition, according to the Regulatory Flexibility Act, is advisory not mandatory when used by other Federal agencies (see Sec. 601(3)).

To conclude, the impact of this proposal on the SBA loan program may be on the order of a few million dollars in loans. Funding permitting, loans have always been made to a small firm as long as it is eligible and meets the appropriate loan requirements. For procurement assistance, the impact is indeterminate; if one small business is not awarded a contract, then another small business will get it. Thus, it offsets the firm not receiving the contract. Any impact due to the extramural use of SBA's size standards is due to that agency's regulation, not the size standard itself.

SBA Actions To Comply With the Administrative Procedure Act

The SBA actions described below, which are normally required to comply with the Administrative Procedure Act, summarize the steps taken by the Agency in developing the proposed rule.

The Agency published advance notices on March 10, 1980, and May 3, 1982, on the revision of size standards.

Another notice requesting public comment on the major issues related to the size standards was published on September 10, 1980.

Public hearings were held by SBA in each of its 10 regions in May and June 1980, and may be held again if warranted.

Over 2,000 comments were received and considered in 1980 and 1982.

Comments from over 35 Federal agencies were received and considered in 1980 and 1982.

Meetings and briefings were held with approximately 40 trade associations and both Congressional Small Business Committees in 1980 and similarly in 1982.

Response was made to specific inquiries from hundreds of phone calls and letters.

SBA filed, categorized, and took into account all the comments and inquiries submitted to the agency.

SBA has provided a very large number of trade publications, magazines, and trade association newsletters with interviews and information on the proposed size standards. There have been press releases as well as articles in such general circulation newspapers as the

Washington Post and the Wall Street Journal.

APPENDIX A.—AGENCIES WHICH HAVE ISSUED RULES DEFINING SMALL BUSINESS

Agency	Citation
Civil Aeronautics Board	14 CFR Part 399.
Commodities Futures Trading Commission	17 CFR Part 1.
Consumer Product Safety Commission	16 CFR Part 1306.
Department of Commerce	37 CFR Parts 1, 5
Department of Defense	39 CFR Part 1-39, 1-701.1, 7-2003(b), 844.512.
Department of Energy	10 CFR 600.33.
Department of Health and Human Services	41 CFR Parts 3-1, 3-7, 1-1701(a).
Department of Labor	30 CFR Parts 55, 56, 57, 75, 77.
Department of the Treasury	26 CFR Parts 1, 11, 1.1244(c)-2, 1.1371-1.
Environmental Protection Agency	40 CFR Parts 704, 713, 29 CFR Part 104.
National Aeronautics and Space Administration	41 CFR Ch. 18 Parts 1, 2, 3, 7.
Securities and Exchange Commission	17 CFR 270.3c-2 SEC Release No. 1765.

Under the Regulatory Flexibility Act (5 U.S.C. 601-612) Federal agencies are urged to accord special consideration to small business under their regulations. These rules defining small business may differ from SBA's but they do not conflict with the size standards for SBA's programs, including procurement set asides. When participating in SBA programs, including procurement from small business, Federal agencies must use the SBA size standards as published in 13 CFR Part 121.

TABLE 1.—ESTIMATE OF NUMBER OF SMALL FIRMS COMPARED TO INDUSTRY TOTAL UNDER PROPOSED REVISIONS FOR SIZE STANDARDS—BY INDUSTRY DIVISIONS

SIC division	Total firms	Current small		Proposed small
		Loan	Proc.	
Agriculture Services and Fishing and Forestry*	96,342	95,703	95,876	95,709
Mining	23,097	22,667	22,667	22,667
Construction	1,176,135	1,166,963	1,167,233	1,173,413
Manufacturing	299,351	281,127	284,111	284,111
Transp. Comm. Util. ¹	134,775	129,086	131,365	133,024
Wholesale*	295,925	273,117	282,481	277,551
Retail	1,567,071	1,514,687	NA	1,527,867
Insurance and Real Estate*	87,686	83,163	NA	86,595
Services	1,763,992	1,752,297	1,753,709	1,756,616
Total	5,435,374	5,318,630	5,337,442	5,357,553

¹ Only those industries in which SBA makes loans are listed. Some industries in the Transportation, Communication, and Utilities division are not eligible for SBA programs. Source: 1980 D&B/USEEM, specially prepared for SBA.

* Merchants wholesalers, wholesale agents, brokers, and commission merchants are included. Sales outlets owned by manufacturers are not included as a wholesale function.

² Only those industries in which SBA makes or proposes to make loans are listed. These are (1) Fire, Casualty, and Marine Insurance Companies; (2) Insurance Agents and Brokers, and (3) Mobile Home Site Operators. Source: County Business Patterns, 1980.

³ County Business Patterns, 1980.

Sources of information: All data were derived from the various U.S. Economic Censuses of 1977, including special tabulations by the Bureau of the Census for SBA, except as noted below.

Farms are listed separately because, historically, SBA has been an insignificant source of Government farm financing, this

role being played by FmHA. Data are from 1978 Census of Agriculture.

SIC division	Total firms	Current small		Proposed small
		Loan	Proc.	
Farms	2,477,000	2,413,000	NA	2,254,000

TABLE 2.—ANALYSIS OF CHANGE

Title	SIC	Estimated number of firms changing status ¹	Percent all firms changing status	Percent small firms changing status ²
Agr. Servs., Fish., and Forestry	A	0	0	0
Mining	B	0	0	0
Construction	C	+6,450	0.55	0.55
Manufacturing	D	2,984	1.00	1.06
Transp., Commun. and Util.	E	+3,938	2.92	3.05
Wholesale	F	+4,434	1.55	1.62
Retail	G	+13,180	0.84	0.87
Insurance and Real Estate ³	H	+3,412	3.90	4.10
Services	I	+4,319	0.24	0.25
Total		36,717	0.71	0.73

Title	SIC	Estimated number of firms changing status ¹	Percent all firms changing status	Percent small firms changing status
Farms	A	-159,000	6.4	6.6

¹Using current loan size standard as a base. 500 employees used for mining as current base. If procurement size standards were used as the base, the number of firms changing status would be fewer.

²Based on current loan standard.

³Includes only Fire, Casualty, and Marine Insurance; Insurance Agents; and Mobile Homesite Operators.

List of Subjects in 13 CFR Part 121

Small businesses, Size standards.

This proposed rule supersedes the proposed rule of November 2, 1982 (47 FR 49664), which proposed a size standard revision of 100 employees for the accounting, auditing, and bookkeeping industry (SIC-8931).

Accordingly, pursuant to Sections 3 and 5 (b) of the Small Business Act, as amended (15 U.S.C. 632, 634), it is proposed to revise Part 121 of Title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Sec.

- 121.1 Purpose and method of establishing size standards.
- 121.2 Standard industrial classifications and size standards.
- 121.3 General definitions.
- 121.4 Small business for financial programs.
- 121.5 Small business for government procurement.
- 121.6 Small business for sales or lease of government property.
- 121.7 Small business innovation research program.
- 121.8 Size determinations.
- 121.9 Protest of small business status.
- 121.10 Size standards responsibilities.
- 121.11 Appeals.
- 121.12 Small business for paying reduced patent fees under Title 35, U.S. Code.

Authority: 15 U.S.C. 632 and 634.

§ 121.1 Purpose and method of establishing size standards.

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the

expression and growth of personal initiatives and individual judgment be assured. The preservation and expansion of such competition is basic not only to economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation. (Small Business Act, Section 2(a), (15 U.S.C. 631))

(a) To implement this policy, Congress established the Small Business Administration (SBA) in 1953 and gave it the responsibility to administer a range of programs designed to achieve these and other social goals. Eligibility for SBA programs requires that a firm be "small." The actual setting of size standards, i.e., the size specification of "small" is delegated to the Administrator of the SBA.

(b) Size standards are established primarily to define eligibility for SBA programs and Federal procurement purposes. It is clear, both from the Act itself and from the legislative history, that the specification of what is a small business has been left to administrative, rather than legislative, determination. Size standards vary by industry with particular attention to the structure of

the designated industry. Administration policy and the needs of the various Federal programs to which they apply. In its most basic sense, this is the approach of establishing size standards. Factors, among others, which are examined for the purpose of setting size standards include maximum size of firms, average firm size, the extent of industry dominance by large firms, the number of firms, the distribution by firm size of sales and employees in the industry, the presence of Federal procurement, and relation to other SBA programs. The development of size standards is not an exact quantitative procedure. No single measure or simple numerical device is the basis for establishing size standards.

(c) The process of establishing size standards is a complex one. The basic source of data used in establishing size standards include: the Standard Industrial Classification Manual, which is used as a guide in defining industries; U.S. Bureau of the Census, Economic Censuses including Concentration Ratios in Manufacturing, Enterprise Statistics; special tabulations of the Enterprise Statistics and Annual Survey of Manufactures prepared for SBA by the U.S. Bureau of the Census; U.S. Department of Commerce, U.S. Industrial Outlook, Survey of Current Business, and County Business Patterns; Internal Revenue Service, Statistics of Income; Dun and Bradstreet, DMI Market Profile; and special USEEM tabulations; Economic Information Service, Marketing Information; Federal Procurement Data System statistics, SBA's own extensive files of articles and correspondence, and information provided by trade associations.

(d) Under the Regulatory Flexibility Act (Pub. L. 96-354), Federal agencies considering and promulgating regulations relating to small businesses generally utilize small business size criteria developed pursuant to the Small Business Act. However, SBA size standards sometimes may not be appropriate for the particular regulation involved. In such cases where a Federal agency decides the SBA size standard is not appropriate, the agency may, after consultation with the SBA Office of Advocacy, establish a small business definition which is more appropriate to the activities of the agency.

(e) SBA assistance should not be regarded as permanent nor as the primary source of a firm's sales. It should be used to assist a firm to compete in the regular business world, without becoming dependent on continuing Government aid. Small businesses should not rely on Federal

assistance from the cradle to the grave, but should plan for the day when they can compete without assistance.

§ 121.2 Standard industrial classification and size standards.

(a) The following industry size standards apply to all SBA programs except the sales of government property (§ 121.6) physical disaster loans (so size standards); Small Business Investment Companies, Development Companies, and Pollution Control Bonds (see § 121.3-4(e)). The industry size standards are set forth in the table following this section. Their relationship to the various SBA programs is set forth in §§ 121.4 and 121.5 of these regulations. The table column labeled "SIC" follows the standard industrial classification code as published by the U.S. Government in the Standard Industrial Classification Manual, Office of Management and Budget, Executive Office of the President. The Standard Industrial Classification Manual is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. (It is available for sale from the U.S. Government Printing Office¹ and is in the reference section of most

libraries.) The number of employees or annual receipts indicates the maximum allowed for a concern (including its affiliates) to be considered small.

(b) For the purpose of these size standards, the term "number of employees" is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceeding 12 months. If a business has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12 month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern has been an affiliate during a portion of the period.

(c)(1) "Annual receipts" means the 3-year average of the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, based on its revenues entered on its regular books of account for its most recently completed 3 fiscal years (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service for Federal income tax purposes.

(2) If a concern has been in business less than 3 years, its average annual receipts for the period in which it has been in business, and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such concern had been affiliated during a portion of the applicable accounting period.

¹ Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 4101-0066)

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
Division A—Agriculture				
Major Group 01—Agricultural Production—Crops				
0111 to 0191.....	Agricultural Production—Crops.....	None	¹ \$1.0	¹ \$0.1
Major Group 02—Agricultural Production—Livestock				
0211.....	Beef Cattle Feedlots (Custom).....	None	\$10.0	\$1.0
0212 to 0291.....	Agricultural Production—Livestock, except 0211.....	None	\$1.0	\$0.1
Major Group 07—Agricultural Services				
All SIC's.....		None	None	50
Major Group 08—Forestry				
All SIC's.....		None	None	25
Major Group 09—Fishing, Hunting, and Trapping				
All SIC's.....		None	None	25
Division B—Mining				
Major Group 10—Metal Mining				
1011.....	Iron Ores.....	500	None	500

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
1021	Copper Ores	500	None	500
1031	Lead and Zinc Ores	500	None	500
1041	Gold Ores	500	None	500
1044	Silver Ores	500	None	500
1051	Bauxite and Other Aluminum Ores	500	None	500
1061	Ferroalloy Ores, Except Vanadium	500	None	500
1061	Metal Mining Services	\$2.0	None	\$3.5
1092	Mercury Ores	500	None	500
1094	Uranium-Radium-Vanadium Ores	500	None	500
1099	Metal Ores, Not Elsewhere Classified	500	None	500
Major Group 11—Anthracite Mining				
1111	Anthracite	500	250	500
1112	Anthracite Mining Services	\$2.0	250	\$3.5
Major Group 12—Bituminous Coal and Lignite Mining				
1211	Bituminous Coal and Lignite	500	None	500
1213	Bituminous Coal and Lignite Mining Services	\$2.0	250	\$3.5
Major Group 13—Oil and Gas Extraction				
1311	Crude Petroleum and Natural Gas	500	None	500
1321	Natural Gas Liquids	500	None	500
1381	Drilling Oil and Gas Wells	500	None	500
1382	Oil and Gas Field Exploration Services	\$2.0	\$2.0	\$3.5
1389	Oil and Gas Field Services, N.E.C.	\$2.0	\$2.0	\$3.5
Major Group 14—Mining and Quarrying of Non-Metallic Minerals, Except Fuels				
1411	Dimension Stone	500	None	500
1422	Crushed and Broken Limestone	500	None	500
1423	Crushed and Broken Granite	500	None	500
1429	Crushed and Broken Stone, N.E.C.	500	None	500
1442	Construction Sand and Gravel	500	None	500
1446	Industrial Sand	500	None	500
1452	Bentonite	500	None	500
1453	Fire Clay	500	None	500
1454	Fuller's Earth	500	None	500
1455	Kaolin and Ball Clay	500	None	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500	None	500
1472	Barite	500	None	500
1473	Fluorspar	500	None	500
1474	Potash, Soda, and Borate Minerals	500	None	500
1475	Phosphate Rock	500	None	500
1476	Rock Salt	500	None	500
1477	Sulfur	500	None	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500	None	500
1481	Nonmetallic Minerals (Except Fuels) Services	\$2.0	\$2.0	\$3.5
1492	Gypsum	500	None	500
1496	Talc, Soapstone, and Pyrophyllite	500	None	500
1499	Miscellaneous Nonmetallic Minerals, N.E.C.	500	None	500
Division C—Construction				
Major Group 15—Building Construction—General Contractors and Operative Builders				
1521	General Contractors—Single-Family Houses	\$12.0	\$9.5	\$21.5
1522	General Contractors—Residential Buildings, Other Than Single-Family	\$12.0	\$9.5	\$21.5
1531	Operative Builders	\$12.0	\$9.5	\$21.5
1541	General Contractors—Industrial Buildings and Warehouses	\$12.0	\$9.5	\$21.5
1542	General Contractors—Nonresidential Buildings, Other Than Industrial Buildings and Warehouses	\$12.0	\$9.5	\$21.5
Major Group 16—Construction Other Than Building Construction—General Contractors				
1611	Highway and Street Construction, Except Elevated Highways	\$12.0	\$9.5	\$21.5
1622	Bridge, Tunnel, and Elevated Highway Construction	\$12.0	\$9.5	\$21.5
1623	Water, Sewer, Pipe Line, Communication and Power Line Construction	\$12.0	\$9.5	\$21.5
1629	Heavy Construction, Except Dredging	\$12.0	\$9.5	\$21.5
1629	Dredging and Surface Cleanup Activities	\$9.5	\$9.5	\$9.5
Major Group 17—Construction—Special Trade Contractors				
1711	Plumbing, Heating (Except Electric), and Air Conditioning	\$5.0	\$5.0	\$9.0
1721	Painting, Paper Hanging, and Decorating	\$5.0	\$5.0	\$9.0
1731	Electrical Work	\$5.0	\$5.0	\$9.0
1741	Masonry, Stone Setting, and Other Stonework	\$5.0	\$5.0	\$9.0
1742	Plastering, Drywall, Acoustical, and Insulation Work	\$5.0	\$5.0	\$9.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	\$5.0	\$5.0	\$9.0
1751	Carpentering	\$5.0	\$5.0	\$9.0
1752	Floor Laying and Other Floor Work, N.E.C.	\$5.0	\$5.0	\$9.0
1761	Roofing and Sheet Metal Work	\$5.0	\$5.0	\$9.0
1771	Concrete Work	\$5.0	\$5.0	\$9.0
1781	Water Well Drilling	\$5.0	\$5.0	\$9.0
1791	Structural Steel Erection	\$5.0	\$5.0	\$9.0
1793	Glass and Glazing Work	\$5.0	\$5.0	\$9.0

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
1794	Excavating the Foundation Work	\$5.0	\$5.0	\$9.0
1795	Wrecking and Demolition Work	\$5.0	\$5.0	\$9.0
1796	Installation or Erection of Building Equipment, N.E.C.	\$5.0	\$5.0	\$9.0
1799	Special Trade Contractors, N.E.C.	\$5.0	\$5.0	\$9.0
Division D—Manufacturing ²				
Major Group 20—Food and Kindred Products				
2011	Meat Packing Plants	500	500	500
2013	Sausages and Other Prepared Meat Products	500	500	500
2016	Poultry Dressing Plants	500	500	500
2017	Poultry and Egg Processing	500	500	500
2021	Creamery Butter	500	500	500
2022	Cheese, Natural and Processed	500	500	500
2023	Condensed and Evaporated Milk	500	500	500
2024	Ice Cream and Frozen Desserts	500	500	500
2026	Fluid Milk	500	500	500
2032	Canned Specialties	1,000	1,000	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies ³	500	500	500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes	500	500	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	500	500	500
2037	Frozen Fruit, Fruit Juices, and Vegetables	500	500	500
2038	Frozen Specialties	500	500	500
2041	Flour and Other Grain Mill Products	500	500	500
2043	Cereal Breakfast Foods	1,000	1,000	1,000
2044	Rice Milling	500	250	500
2045	Blended and Prepared Flour	500	500	500
2046	Wet Corn Milling	750	750	750
2047	Dog, Cat, and Other Pet Food	500	500	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, N.E.C.	500	250	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500	250	500
2052	Cookies and Crackers	750	750	750
2061	Cane Sugar, Except Refining Only	500	250	500
2062	Cane Sugar Refining	750	750	750
2063	Beet Sugar	750	750	750
2065	Candy and Other Confectionery Products	500	250	500
2066	Chocolate and Cocoa Products	500	500	500
2067	Chewing Gum	500	500	500
2074	Cottonseed Oil Mills	500	250	500
2075	Soybean Oil Mills	500	500	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000	1,000	1,000
2077	Animal and Marine Fats and Oils	500	250	500
2079	Shortening, Table Oils, Margarine and Other Edible Fats and Oils, N.E.C.	750	750	750
2082	Malt Beverages	500	500	500
2083	Malt	500	250	500
2084	Wines, Brandy, and Brandy Spirits	500	250	500
2085	Distilled, Rectified, and Blended Liquors	750	750	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500	250	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500	500	500
2091	Canned and Cured Fish and Seafoods	500	250	500
2092	Fresh or Frozen Packaged Fish and Seafoods	500	250	500
2095	Roasted Coffee	500	250	500
2097	Manufactured Ice	500	250	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500	250	500
2099	Food Preparations, N.E.C.	500	250	500
Major Group 21—Tobacco Manufacturers				
2111	Cigarettes	1,000	1,000	1,000
2121	Cigars	500	500	500
2131	Tobacco (Chewing and Smoking) and Snuff	500	500	500
2141	Tobacco Stemming and Redrying	500	500	500
Major Group 22—Textile Mill Products				
2211	Broad Woven Fabric Mills, Cotton	1,000	1,000	1,000
2212	Broad Woven Fabric Mills, Man-Made Fiber and Silk	500	500	500
2231	Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing)	500	250	500
2241	Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-Made Fiber	500	250	500
2251	Women's Full Length and Knee Length Hosiery	500	250	500
2252	Hosiery, Except Women's Full Length and Knee Length Hosiery	500	250	500
2253	Knit Outerwear Mills	500	250	500
2254	Knit Underwear Mills	500	250	500
2257	Circular Knit Fabric Mills	500	250	500
2258	Warp Knit Fabric Mills	500	250	500
2259	Knitting Mills	500	250	500
2261	Finishers of Broad Woven Fabrics of Cotton	1,000	550	1,000
2262	Finishers of Broad Woven Fabrics of Man-Made Fiber and Silk	500	500	500
2269	Finishers of Textiles, N.E.C.	500	250	500
2271	Woven Carpets and Rugs	750	750	750
2272	Tufted Carpets and Rugs	500	500	500
2279	Carpets and Rugs, N.E.C.	500	500	500
2281	Yarn Spinning Mills: Cotton, Man-Made Fibers, and Silk	500	500	500
2282	Yarn Texturizing, Throwing, and Winding Mills: Cotton, Man-Made Fibers, and Silk	500	250	500
2283	Yarn Mills, Wool, Including Carpet and Rug Yarn	500	250	500
2284	Thread Mills	500	500	500

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
2291	Felt Goods, Except Woven Felts and Hats	500	250	500
2292	Lace Goods	500	250	500
2293	Paddings and Upholstery Filling	500	250	500
2294	Processed Waste and Recovered Fibers and Flock	500	250	500
2295	Coated Fabrics, Not Rubberized	1,000	250	1,000
2296	Tire Cord and Fabric	1,000	1,000	1,000
2297	Nonwoven Fabrics	500	250	500
2298	Cordage and Twine	500	250	500
2299	Textile Goods, N.E.C.	500	250	500
Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials				
2311	Men's, Youths', and Boys' Suits, Coats and Overcoats	500	250	500
2321	Men's, Youths', and Boys' Shirts (Except Work Shirts) and Nightwear	500	250	500
2322	Men's, Youths', and Boys' Underwear	500	250	500
2323	Men's, Youths', and Boys' Neckwear	500	250	500
2327	Men's, Youths', and Boys' Separate Trousers	500	250	500
2328	Men's, Youths', and Boys' Work Clothing	500	250	500
2329	Men's, Youths', and Boys' Clothing, N.E.C.	500	250	500
2331	Women's, Misses', and Juniors' Blouses, Waists, and Shirts	500	250	500
2335	Women's, Misses', and Juniors' Dresses	500	250	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500	250	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500	250	500
2341	Women's, Misses', and Children's and Infants' Underwear and Nightwear	500	250	500
2342	Brasieres, Girdles, and Allied Garments	500	250	500
2351	Millinery	500	250	500
2352	Hats and Caps, Except Millinery	500	250	500
2351	Girls', Children's, and Infants' Dresses, Blouses, Waists, and Shirts	500	250	500
2363	Girls', Children's, and Infants' Coats and Suits	500	250	500
2368	Girls', Children's, and Infants' Outerwear, N.E.C.	500	250	500
2371	Fur Goods	500	250	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500	250	500
2384	Robes and Dressing Gowns	500	250	500
2385	Raincoats and Other Waterproof Outer Garments	500	250	500
2396	Leather and Sheep Lined Clothing	500	250	500
2397	Apparel and Belts	500	250	500
2399	Apparel and Accessories, N.E.C.	500	250	500
2391	Curtains and Draperies	500	250	500
2392	Housefurnishings, Except Curtains and Draperies	500	250	500
2393	Textile Bags	500	250	500
2394	Canvas and Related Products	500	250	500
2395	Pressing, Decorative and Novelty Stitching, and Tucking for the Trade	500	250	500
2396	Automotive Trimmings, Apparel Findings, and Related Products	500	250	500
2397	Schiffli Machine Embroideries	500	250	500
2399	Fabricated Textile Products, N.E.C.	500	250	500
Major Group 24—Lumber and Wood Products, Except Furniture				
2411	Logging Camps and Logging Contractors	500	250	500
2421	Sawmills and Planing Mills, General	500	250	500
2426	Hardwood Dimension and Flooring Mills	500	250	500
2429	Special Product Sawmills, N.E.C.	500	250	500
2431	Millwork	500	250	500
2434	Wood Kitchen Cabinets	500	250	500
2435	Hardwood Veneer and Plywood	500	250	500
2436	Softwood Veneer and Plywood	500	250	500
2439	Structural Wood Members, N.E.C.	500	250	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500	250	500
2448	Wood Pallets and Skids	500	250	500
2449	Wood Containers, N.E.C.	500	250	500
2451	Mobile Homes	500	250	500
2452	Prefabricated Wood Buildings and Components	500	250	500
2491	Wood Preserving	500	250	500
2492	Particleboard	500	250	500
2499	Wood Products, N.E.C.	500	250	500
Major Group 25—Furniture and Fixtures				
2511	Wood Household Furniture, Except Upholstered	250	500	500
2512	Wood Household Furniture, Upholstered	500	250	500
2514	Metal Household Furniture	500	250	500
2515	Mattresses and Bedsprings	500	250	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500	250	500
2519	Household Furniture, N.E.C.	500	250	500
2521	Wood Office Furniture	500	250	500
2522	Metal Office Furniture	500	500	500
2531	Public Building and Related Furniture	500	250	500
2541	Wood Partitions, Shelving, Lockers, and Office and Store Fixtures	500	250	500
2542	Metal Partitions, Shelving, Lockers, and Office and Store Fixtures	500	250	500
2591	Draper Hardware and Window Blinds and Shades	500	250	500
2599	Furniture and Fixtures, N.E.C.	500	250	500
Major Group 26—Paper and Allied Products				
2611	Pulp Mills	750	750	750
2621	Paper Mills, Except Building Paper Mills	750	750	750

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
2631	Paperboard Mills	750	750	750
2641	Paper Coating and Glazing	500	500	500
2642	Envelopes	500	250	500
2643	Bags, Except Textile Bags	500	500	500
2645	Die-Cut Paper and Paperboard and Cardboard	500	250	500
2646	Pressed and Molded Pulp Goods	750	750	750
2647	Sanitary Paper Products	500	500	500
2648	Stationery, Tablets, and Related Products	500	2500	500
2649	Converted Paper and Paperboard Products, N.E.C.	500	500	500
2651	Filing Paperboard Boxes	500	250	500
2652	Set-up Paperboard Boxes	500	250	500
2653	Corrugated and Solid Fiber Boxes	500	250	500
2654	Sanitary Food Containers	750	750	750
2655	Fiber Cans, Tubes, Drums, and Similar Products	500	250	500
2661	Building Paper and Building Board Mills	750	750	750
Major Group 27—Printing, Publishing, and Allied Industries				
2711	Newspapers: Publishing, Publishing and Printing	500	250	500
2721	Periodicals: Publishing, Publishing and Printing	500	250	500
2731	Books: Publishing, Publishing and Printing	500	250	500
2732	Book Printing	500	250	500
2741	Miscellaneous Publishing	500	250	500
2751	Commercial Printing, Letterpress, and Screen	500	250	500
2752	Commercial Printing, Lithographic	500	250	500
2753	Engraving and Plate Printing	500	250	500
2754	Commercial Printing, Gravure	500	250	500
2761	Manifold Business Forms	500	250	500
2771	Greeting Card Publishing	500	250	500
2782	Blankbooks, Looseleaf Binders and Devices	500	250	500
2789	Bookbinding and Related Work	500	250	500
2791	Typesetting	500	250	500
2793	Photoengraving	500	250	500
2794	Electrotyping and Stereotyping	500	250	500
2795	Lithographic Platemaking and Related Services	500	250	500
Major Group 28—Chemicals and Allied Products				
2812	Alkalies and Chlorine	1,000	1,000	1,000
2813	Industrial Gases	1,000	1,000	1,000
2816	Inorganic Pigments	1,000	1,000	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000	1,000	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750	750	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000	1,000	1,000
2823	Cellulosic Man-Made Fibers	1,000	1,000	1,000
2824	Synthetic Organic Fibers, Except Cellulosic	1,000	1,000	1,000
2831	Biological Products	500	250	500
2833	Medicinal Chemicals and Botanical Products	750	250	750
2834	Pharmaceutical Preparations	750	750	750
2841	Soap and Other Detergents, Except Specialty Cleaners	750	750	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	500	500	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils and Assistants	500	250	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500	500	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500	250	500
2861	Gum and Wood Chemicals	500	500	500
2865	Cyclic (Coal Tar) Crudes, and Cyclic Intermediates, Dyes, and Organic Pigments (Lakes and Toners)	750	750	750
2869	Industrial Organic Chemicals, N.E.C.	1,000	1,000	1,000
2873	Nitrogenous Fertilizers	1,000	1,000	1,000
2874	Phosphatic Fertilizers	500	500	500
2875	Fertilizers, Mixing Only	500	500	500
2879	Pesticides and Agriculture Chemicals, N.E.C.	500	500	500
2891	Adhesives and Sealants	500	250	500
2892	Explosives	750	750	750
2893	Printing Ink	500	250	500
2895	Carbon Black	500	500	500
2899	Chemicals and Chemical Preparations, N.E.C.	500	250	500
Major Group 29—Petroleum Refining and Related Industries				
2911	Petroleum Refining*	1,500	1,500	1,500
2951	Paving Mixtures and Blocks	500	250	500
2952	Asphalt Felts and Coatings	750	750	750
2992	Lubricating Oils and Greases	500	500	500
2999	Products of Petroleum and Coal, N.E.C.	500	250	500
Major Group 30—Rubber and Miscellaneous Plastics Products				
3011	Tires and Inner Tubes*	1,000	1,000	1,000
3021	Rubber and Plastics Footwear	1,000	1,000	1,000
3031	Reclaimed Rubber	750	750	750
3041	Rubber and Plastics Hose and Belting	500	500	500
3069	Fabricated Rubber Products, N.E.C.	500	500	500
3079	Miscellaneous Plastics Products	500	250	500

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
Major Group 31—Leather and Leather Products				
3111	Leather Tanning and Finishing	500	250	500
3131	Boot and Shoe Cut Stock and Findings	500	250	500
3142	House Slippers	500	250	500
3143	Men's Footwear, Except Athletic	500	500	500
3144	Women's Footwear, Except Athletic	500	500	500
3149	Footwear, Except Rubber, N.E.C.	500	500	500
3151	Leather Gloves and Mittens	500	250	500
3161	Luggage	500	250	500
3171	Women's Handbags and Purses	500	250	500
3172	Personal Leather Goods, Except Women's Handbags and Purses	500	250	500
3199	Leather Goods, N.E.C.	500	250	500
Major Group 32—Stone, Clay, Glass, and Concrete Products				
3211	Flat Glass	1,000	1,000	1,000
3221	Glass Containers	750	750	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750	750	750
3231	Glass Products, Made of Purchased Glass	500	250	500
3241	Cement, Hydraulic	750	750	750
3251	Brick and Structural Clay Tile	500	250	500
3253	Ceramic Wall and Floor Tile	500	500	500
3255	Clay Refractories	500	250	500
3259	Structural Clay Products, N.E.C.	500	250	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750	500	750
3262	Vitreous China Table and Kitchen Articles	500	500	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	500	500	500
3264	Porcelain Electrical Supplies	500	500	500
3269	Pottery Products, N.E.C.	500	250	500
3271	Concrete Block and Brick	500	250	500
3272	Concrete Products, Except Block and Brick	500	250	500
3273	Ready-Mixed Concrete	500	250	500
3274	Lime	500	500	500
3275	Gypsum Products	1,000	1,000	1,000
3281	Cut Stone and Stone Products	500	250	500
3291	Abrasive Products	500	250	500
3292	Asbestos Products	750	750	750
3293	Gaskets, Packing, and Sealing Devices	500	500	500
3295	Minerals and Earths, Ground or Otherwise Treated	500	250	500
3296	Mineral Wool	750	750	750
3297	Nonclay Refractories	750	750	750
3299	Nonmetallic Mineral Products, N.E.C.	500	250	500
Major Group 33—Primary Metal Industries				
3312	Blast Furnaces (Including Coke Ovens), Steel Works, and Rolling Mills	1,000	1,000	1,000
3313	Electrometallurgical Products	750	750	750
3315	Steel Wire Drawing and Steel Nails and Spikes	1,000	1,000	1,000
3316	Cold Rolled Steel Sheet, Strip, and Bars	1,000	1,000	1,000
3317	Steel Pipe and Tubes	1,000	1,000	1,000
3321	Gray Iron Foundries	500	500	500
3322	Malleable Iron Foundries	500	500	500
3324	Steel Investment Foundries	500	500	500
3325	Steel Foundries, N.E.C.	500	500	500
3331	Primary Smelting and Refining of Copper	1,000	1,000	1,000
3332	Primary Smelting and Refining of Lead	1,000	1,000	1,000
3333	Primary Smelting and Refining of Zinc	750	750	750
3334	Primary Production of Aluminum	1,000	1,000	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, N.E.C.	750	750	750
3341	Secondary Smelting and Refining on Non-ferrous Metals	500	250	500
3351	Rolling, Drawing, and Extruding of Copper	750	750	750
3353	Aluminum Sheet, Plate, and Foil	750	750	750
3354	Aluminum Extruded Products	750	750	750
3355	Aluminum Rolling and Drawing, N.E.C.	750	750	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750	750	750
3357	Drawing and Insulating of Nonferrous Wire	1,000	1,000	1,000
3361	Aluminum Foundries (Castings)	500	250	500
3362	Brass, Bronze, Copper, Copper Base Alloy Foundries (Castings)	500	250	500
3369	Nonferrous Foundries (Castings), N.E.C.	500	250	500
3386	Metal Heat Treating	750	750	750
3399	Primary Metal Products, N.E.C.	750	750	750
Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment				
3411	Metal Cans	1,000	1,000	1,000
3412	Metal Shopping Barrels, Drums, Kegs, and Pails	500	500	500
3421	Cutlery	500	250	500
3423	Hand and Edge Tools, Except Machine Tools and Hand Saws	500	250	500
3425	Hand Saws and Saw Blades	500	250	500
3429	Hardware, N.E.C.	500	250	500
3431	Enamelled Iron and Metal Sanitary Ware	750	750	750
3432	Plumbing Fixture Fittings and Trim (Brass Goods)	500	500	500
3433	Heating Equipment, Except Electric and Warm Air Furnace	500	500	500
3441	Fabricated Structural Metal	500	250	500
3442	Metal Doors, Sash, Frames, Molding, and Trim	500	250	500
3443	Fabricated Plate Work (Boiler Shops)	500	250	500

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
3444.	Sheet Metal Work.	500	250	500
3446.	Architectural and Ornamental Metal Work.	500	250	500
3448.	Prefabricated Metal Buildings and Components.	500	250	500
3449.	Miscellaneous Metal Work.	500	250	500
3451.	Screw Machine Products.	500	250	500
3452.	Bolts, Nuts, Screws, Rivets, and Washers.	500	500	500
3462.	Iron and Steel Forgings.	500	500	500
3463.	Nonferrous Forgings.	500	250	500
3465.	Automotive Stampings.	500	250	500
3466.	Crowns and Closures.	500	250	500
3469.	Metal Stampings, N.E.C.	500	250	500
3471.	Electroplating, Plating, Polishing, Anodizing, and Coloring.	500	250	500
3479.	Coating, Engraving, and Allied Services, N.E.C.	500	250	500
3482.	Small Arms Ammunition.	1,000	1,000	1,000
3483.	Ammunition, Except for Small Arms, N.E.C.	1,500	1,000	1,500
3484.	Small Arms.	1,000	1,000	1,000
3489.	Ordinance and Accessories, N.E.C.	500	250	500
3493.	Steel Springs, Except Wire.	500	500	500
3494.	Valves and Pipe Fittings, Except Plumbers' Brass Goods.	500	500	500
3495.	Wire Springs.	500	250	500
3496.	Miscellaneous Fabricated Wire Products.	500	250	500
3497.	Metal Foil and Leaf.	500	500	500
3498.	Fabricated Pipe and Fabricated Pipe Fittings.	500	250	500
3499.	Fabricated Metal Products, N.E.C.	500	500	500
Major Group 35—Machinery, Except Electrical				
3511.	Steam, Gas, and Hydraulic Turbines and Turbine Generator Set Units.	1,000	1,000	1,000
3519.	Internal Combustion Engines, N.E.C.	1,000	1,000	1,000
3523.	Farm Machinery and Equipment.	500	500	500
3524.	Garden Tractors and Lawn and Garden Equipment.	500	500	500
3531.	Construction Machinery and Equipment.	750	750	750
3532.	Mining Machinery and Equipment, Except Oil Field Machinery and Equipment.	500	500	500
3533.	Oil Field Machinery and Equipment.	500	500	500
3534.	Elevators and Moving Stairways.	500	500	500
3535.	Conveyors and Conveying Equipment.	500	250	500
3536.	Hoists, Industrial Cranes, and Monorail Systems.	500	500	500
3537.	Industrial Trucks, Tractors, Trailers, and Stackers.	750	750	750
3541.	Machine Tools, Metal Cutting Types.	500	500	500
3542.	Machine Tools, Metal Forming Types.	500	500	500
3544.	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds.	500	250	500
3545.	Machine Tool Accessories and Measuring Devices.	500	250	500
3546.	Power Driven Hand Tools.	500	500	500
3547.	Rolling Mill Machinery and Equipment.	500	500	500
3549.	Metalworking Machinery, N.E.C.	500	250	500
3551.	Food Products Machinery.	500	250	500
3552.	Textile Machinery.	500	250	500
3553.	Woodworking Machinery.	500	250	500
3554.	Paper Industries Machinery.	500	250	500
3555.	Printing Trades Machinery and Equipment.	500	500	500
3559.	Special Industry Machinery, N.E.C.	500	250	500
3561.	Pumps and Pumping Equipment.	500	500	500
3562.	Ball and Roller Bearings.	750	750	750
3563.	Air and Gas Compressors.	500	500	500
3564.	Blowers and Exhaust and Ventilation Fans.	500	250	500
3565.	Industrial Patterns.	500	250	500
3566.	Speed Changers, Industrial High Speed Drivers, and Gears.	500	500	500
3567.	Industrial Process Furnaces and Ovens.	500	250	500
3568.	Mechanical Power Transmission Equipment, N.E.C.	500	500	500
3569.	General Industrial Machinery and Equipment, N.E.C.	500	250	500
3572.	Typewriters.	1,000	1,000	1,000
3573.	Electronic Computing Equipment.	1,000	1,000	1,000
3574.	Calculating and Accounting Machines, Except Electronic Computing Equipment.	1,000	1,000	1,000
3576.	Scales and Balances, Except Laboratory.	500	250	500
3579.	Office Machines, N.E.C.	500	500	500
3581.	Automatic Merchandising Machines.	500	250	500
3582.	Commercial Laundry, Dry Cleaning, and Pressing Machines.	500	250	500
3585.	Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment.	750	750	750
3586.	Measuring and Dispensing Pumps.	500	500	500
3589.	Service Industry Machines, N.E.C.	500	250	500
3592.	Carburetors, Pistons, Piston Rings, and Valves.	500	250	500
3599.	Machinery, Except Electrical, N.E.C.	500	250	500
Major Group 36—Electrical and Electronic Machinery, Equipment, and Supplies				
3612.	Power, Distribution, and Specialty Transformers.	750	750	750
3613.	Switchgear and Switchboard Apparatus.	750	750	750
3621.	Motors and Generators.	1,000	1,000	1,000
3622.	Industrial Controls.	750	750	750
3623.	Welding Apparatus, Electric.	500	250	500
3624.	Carbon and Graphite Products.	750	750	750
3629.	Electrical Industrial Apparatus, N.E.C.	500	500	500
3631.	Household Cooking Equipment.	750	750	750
3632.	Household Refrigerators and Home and Farm Freezers.	1,000	1,000	1,000
3633.	Household Laundry Equipment.	1,000	1,000	1,000
3634.	Electric Housewares and Fans.	750	750	750

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
3635	Household Vacuum Cleaners	750	750	750
3636	Sewing Machines	750	750	750
3639	Household Appliances, N.E.C.	500	500	500
3641	Electric Lamps	1,000	1,000	1,000
3643	Current-Carrying Wiring Devices	500	500	500
3644	Noncurrent-Carrying Wiring Devices	500	500	500
3645	Residential Electric Light Fixtures	500	250	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500	250	500
3647	Vehicular Lighting Equipment	500	250	500
3648	Lighting Equipment, N.E.C.	500	250	500
3651	Radio and Television Receiving Sets, Except Communication Types	750	750	750
3652	Phonograph Records and Pre-recorded Magnetic Tape	750	750	750
3661	Telephone and Telegraph Apparatus	1,000	1,000	1,000
3662	Radio and Television Transmitting, Signaling, and Detection Equipment and Apparatus	750	750	750
3671	Radio and Television Receiving Type Electron Tubes, Except Cathode Ray	1,000	1,000	1,000
3672	Cathode Ray Television Picture Tubes	750	750	750
3673	Transmitting, Industrial, and Special Purpose Electron Tubes	750	750	750
3674	Semiconductors and Related Devices	500	500	500
3675	Electronic Capacitors	500	500	500
3676	Resistors, for Electronic Applications	500	500	500
3677	Electronic Coils, Transformers, and Other Inductors	500	500	500
3678	Connectors, for Electronic Applications	500	500	500
3679	Electronic Components, N.E.C.	500	500	500
3681	Storage Batteries	500	500	500
3682	Primary Batteries, Dry and Wet	1,000	1,000	1,000
3693	Radiographic X-ray, Fluoroscopic X-ray, Therapeutic X-ray, and Other X-ray Apparatus and Tubes; Electromedical and Electrotherapeutic Apparatus	500	500	500
3694	Electrical Equipment for Internal Combustion Engines	750	750	750
3699	Electrical Machinery, Equipment, and Supplies, N.E.C.	500	500	500
Major Group 37—Transportation Equipment				
3711	Motor Vehicles and Passenger Car Bodies	1,000	1,000	1,000
3713	Truck and Bus Bodies	500	250	500
3714	Motor Vehicle Parts and Accessories	500	500	500
3715	Truck Trailers	500	500	500
3718	Motor Homes	500	250	1,000
3721	Aircraft	1,500	1,500	1,500
3724	Aircraft Engines and Engine Parts	1,000	1,000	1,000
3726	Aircraft Parts and Auxiliary Equipment N.E.C.	1,000	1,000	1,000
3731	Ship Building and Repairing	1,000	1,000	1,000
3732	Boat Building and Repairing	500	250	500
3743	Railroad Equipment	1,000	750	1,000
3751	Motorcycles, Bicycles, and Parts	500	500	500
3761	Guided Missiles and Space Vehicles	1,000	250	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	1,000	1,000	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000	1,000	1,000
3792	Travel Trailers and Campers	500	250	500
3795	Tanks and Tank Components	1,000	1,000	1,000
3799	Transportation Equipment, N.E.C.	500	250	500
Major Group 38—Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks				
3811	Engineering, Laboratory, Scientific, and Research Instruments and Associated Equipment	500	500	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances	500	500	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables, and Related Products	500	500	500
3824	totalizing Fluid Meters and Counting Device	500	500	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals	500	500	500
3829	Measuring and Controlling Devices, N.E.C.	500	500	500
3832	Optical Instruments and Lenses	500	250	500
3841	Surgical and Medical Instruments and Apparatus	500	250	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies	500	250	500
3843	Dental Equipment and Supplies	500	250	500
3851	Ophthalmic Goods	500	250	500
3861	Photographic Equipment and Supplies	500	500	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts	500	500	500
Major Group 39—Miscellaneous Manufacturing Industries				
3911	Jewelry, Precious Metal	500	250	500
3914	Silverware, Plated Ware, and Stainless Steel Ware	500	500	500
3915	Jewelers' Findings and Materials, and Lapidary Work	500	250	500
3931	Musical Instruments	500	250	500
3942	Dolls	500	250	500
3944	Games, Toys, and Children's Vehicles; Except Dolls and Bicycles	500	250	500
3949	Sporting and Athletic Goods, N.E.C.	500	250	500
3951	Pens, Mechanical Pencils, and Parts	500	500	500
3952	Lead Pencils, Crayons, and Artists' Materials	500	250	500
3953	Marking Devices	500	250	500
3955	Carbon Paper and Inked Ribbons	500	250	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal	500	250	500
3962	Feathers, Plumes, and Artificial Trees and Flowers	500	250	500
3963	Buttons	500	250	500
3964	Needles, Pins, Hooks and Eyes, and Similar Notions	500	250	500
3991	Brooms and Brushes	500	250	500
3993	Signs and Advertising Displays	500	250	500

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
3995	Burial Caskets	500	250	500
3996	Uncolored, Asphalted-Felt-Basis, and Other Hard Surface Floor Coverings, N.E.C.	750	750	750
3999	Manufacturing Industries, N.E.C.	500	250	500
Division E—Transportation, Communications, Electric, Gas, and Sanitary Services				
Major Group 40—Railroad Transportation				
4011	Railroad, Line-haul Operating	500	\$1.5	1,500
4013	Switching and Terminal Establishments	500	\$1.5	500
Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation				
4111	Local and Suburban Transit	500	\$1.5	\$3.5
4119	Local Passenger Transportation, N.E.C.	500	\$1.5	\$3.5
4121	Taxis	500	\$1.5	\$3.5
4131	Intercity and Rural Highway Passenger Transportation	500	\$1.5	\$3.5
4141	Local Passenger Transportation Charter Service	500	\$1.5	\$3.5
4142	Passenger Transportation Charter Service, Except Local	500	\$1.5	\$3.5
4151	School Buses	500	\$1.5	\$3.5
4171	Terminal and Joint Terminal Maintenance Facilities for Motor Vehicle Passenger Transportation	\$2.0	\$2.0	\$3.5
4172	Maintenance and Service Facilities for Motor Vehicle Passenger Transportation	\$2.0	\$2.0	\$3.5
Major Group 42—Motor Freight Transportation and Warehousing				
4212	Local Trucking Without Storage*	\$7.0	\$6.5	\$12.5
4213	Trucking, Except Local	\$7.0	\$6.5	\$12.5
4214	Local Trucking With Storage	\$7.0	\$6.5	\$12.5
4221	Farm Product Warehousing and Storage	\$7.0	\$6.5	\$12.5
4222	Refrigerated Warehousing	\$7.0	\$6.5	\$12.5
4224	Household Goods Warehousing and Storage	\$7.0	\$6.5	\$12.5
4225	General Warehousing and Storage	\$7.0	\$6.5	\$12.5
4226	Special Warehousing and Storage, N.E.C.	\$7.0	\$6.5	\$12.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	\$2.0	\$2.0	\$3.5
Major Group 44—Water Transportation†				
4411	Deep Sea Foreign Transportation	500	\$1.5	500
4421	Transportation to and Between Non-contiguous Territories	500	\$1.5	500
4422	Coastwise Transportation	500	\$1.5	500
4423	Intercoastal Transportation	500	\$1.5	500
4431	Great Lakes-St. Lawrence Seaway Transportation	500	\$1.5	500
4441	Transportation on Rivers and Canals	500	\$1.5	500
4452	Ferries	500	\$1.5	500
4453	Lighterage	500	\$1.5	500
4454	Towing and Tugboat Service	\$2.0	\$2.0	\$3.5
4459	Local Water Transportation, N.E.C.	500	\$1.5	500
4463	Marine Cargo Handling	\$7.5	\$1.5	\$12.5
4464	Canal Operation	\$2.0	\$2.0	\$3.5
4469	Water Transportation Services, N.E.C.	\$2.0	\$2.0	\$3.5
Major Group 45—Transportation by Air†				
4511	Air Transportation, Certificated Carriers	1,500	1,000	1,500
4521	Air Transportation, Noncertificated Carriers*	1,500	1,000	1,500
4582	Airports and Flying Fields	\$2.0	\$2.0	\$3.5
4583	Airport Terminal Services	\$2.0	\$2.0	\$3.5
Major Group 46—Pipe Lines, Except Natural Gas				
4612	Crude Petroleum Pipe Lines	None	None	1,500
4613	Refined Petroleum Pipe Lines	None	None	1,500
4619	Pipe Lines, N.E.C.	None	None	\$20.0
Major Group 47—Transportation Services				
4712	Freight Forwarding	\$7.0	\$6.5	\$12.5
4722	Arrangement of Passenger Transportation	\$2.0	\$2.0	\$3.5
4723	Arrangement of Transportation of Freight and Cargo	\$2.0	\$2.0	\$3.5
4742	Rental of Railroad Cars With Care of Lading	\$2.0	\$2.0	\$3.5
4743	Rental of Railroad Cars Without Care of Lading	\$2.0	\$2.0	\$3.5
4782	Inspection and Weighing Services Connected With Transportation	\$2.0	\$2.0	\$3.5
4783	Packing and Crating	\$7.0	\$6.5	\$12.5
4784	Fixed Facilities for Handling Motor Vehicle Transportation, N.E.C.	\$2.0	2.0	\$3.5
4789	Services Incidental to Transportation, N.E.C.	\$2.0	\$2.0	\$3.5
Major Group 48—Communications				
4832	Radio Broadcasting	None	\$2.0	\$3.5
4833	Television Broadcasting	None	\$5.0	\$7.0
4899	Communication Services, N.E.C.	\$2.0	\$2.0	\$7.5
Major Group 49—Electric, Gas, and Sanitary Services				
4941	Water Supply	None	\$2.5	\$3.5

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
4952	Sewerage Systems	None	\$1.5	\$3.5
4953	Refuse Systems*	\$3.5	\$2.0	\$6.0
4959	Sanitary Services, N.E.C.	\$2.0	\$2.0	\$3.5
4961	Steam Supply	None	None	\$6.0
4971	Irrigation Systems	None	None	\$3.5

Division F—Wholesale Trade

Major Group 50—Wholesale Trade—Durable Goods

5012	Automobiles and Other Motor Vehicles	500	\$22.0	\$35.0
5013	Automotive Parts and Supplies	500	\$9.5	\$15.0
5014	Tires and Tubes	500	\$22.0	\$25.0
5021	Furniture	500	\$9.5	\$15.0
5023	Home Furnishings	500	\$9.5	\$15.0
5031	Lumber, Plywood, and Millwork	500	\$9.5	\$25.0
5039	Construction Materials, N.E.C.	500	\$14.5	\$15.0
5041	Sporting and Recreational Goods and Supplies	500	\$14.5	\$15.0
5042	Toys and Hobby Goods and Supplies	500	\$14.5	\$15.0
5043	Photographic Equipment and Supplies	500	\$9.5	\$25.0
5051	Metals Service Centers and Offices	500	\$14.5	\$35.0
5052	Coal and Other Minerals and Ores	500	\$9.5	\$35.0
5063	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials	500	\$22.0	\$25.0
5064	Electrical Appliances, Television and Radio Sets	500	\$14.5	\$25.0
5065	Electronic Parts and Equipment	500	\$9.5	\$15.0
5072	Hardware	500	\$9.5	\$15.0
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	500	\$9.5	\$15.0
5075	Warm Air Heating and Air Conditioning Equipment and Supplies	500	\$9.5	\$15.0
5078	Refrigeration Equipment and Supplies	500	\$9.5	\$15.0
5081	Commercial Machines and Equipment	500	\$22.0	\$25.0
5082	Construction and Mining Machinery and Equipment	500	\$14.5	\$25.0
5083	Farm and Garden Machinery and Equipment	500	\$22.0	\$25.0
5084	Industrial Machinery and Equipment	500	\$14.5	\$15.0
5085	Industrial Supplies	500	\$14.5	\$15.0
5086	Professional Equipment and Supplies	500	\$9.5	\$15.0
5087	Service Establishment Equipment and Supplies	500	\$9.5	\$15.0
5088	Transportation Equipment and Supplies, Except Motor Vehicles	500	\$9.5	\$15.0
5093	Scrap and Waste Materials	500	\$9.5	\$25.0
5094	Jewelry, Watches, Diamonds and Other Precious Stones	500	\$9.5	\$15.0
5099	Durable Goods, N.E.C.	500	\$9.5	\$15.0
5111	Printing and Writing Paper	500	\$14.5	\$35.0
5112	Stationery Supplies	500	\$9.5	\$15.0
5113	Industrial and Personal Service Paper	500	\$22.0	\$25.0
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	500	\$14.5	\$25.0
5123	Piece Goods (Woven Fabrics)	500	\$14.5	\$15.0
5134	Notions and Other Dry Goods	500	\$14.5	\$15.0
5138	Men's and Boys' Clothing and Furnishings	500	\$9.5	\$15.0
5137	Women's, Children's and Infants' Clothing and Accessories	500	\$9.5	\$15.0
5139	Footwear	500	\$14.5	\$15.0
5141	Groceries, General Line	500	\$22.0	\$35.0
5142	Frozen Foods	500	\$22.0	\$25.0
5143	Dairy Products	500	\$14.5	\$25.0
5144	Poultry and Poultry Products	500	\$9.5	\$15.0
5145	Confectionery	500	\$9.5	\$15.0
5146	Fish and Seafoods	500	\$9.5	\$15.0
5147	Meats and Meat Products	500	\$14.5	\$25.0
5148	Fresh Fruits and Vegetables	500	\$9.5	\$15.0
5149	Groceries and Related Products, N.E.C.	500	\$14.5	\$25.0
5152	Cotton	500	\$22.0	\$35.0
5153	Grain	500	\$14.5	\$35.0
5154	Livestock	500	\$14.5	\$25.0
5159	Farm-Product Raw Materials, N.E.C.	500	\$9.5	\$35.0
5161	Chemicals and Allied Products	500	\$22.0	\$25.0
5171	Petroleum Bulk Stations and Terminals	500	\$22.0	\$25.0
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	500	\$22.0	\$35.0
5181	Beer and Ale	500	\$9.5	\$15.0
5182	Wines and Distilled Alcoholic Beverages	500	\$22.0	\$35.0
5191	Farm Supplies	500	\$9.5	\$15.0
5194	Tobacco and Tobacco Products	500	\$14.5	\$25.0
5198	Paints, Varnishes, and Supplies	500	\$22.0	\$25.0
5199	Nondurable Goods, N.E.C.	500	\$9.5	\$15.0

Division G—Retail Trade

Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers

5211	Lumber and Other Building Materials Dealers	None	\$2.0	\$3.5
5231	Paint, Glass, and Wallpaper Stores	None	\$2.0	\$3.5
5251	Hardware Stores	None	\$2.0	\$3.5
5261	Retail Nurseries, Lawn and Garden Supply Stores	None	\$2.0	\$3.5
5271	Mobile Home Dealers	None	\$3.5	\$6.5

Major Group 53—General Merchandise Stores

5311	Department Stores	None	\$7.5	\$13.5
5331	Variety Stores	None	\$3.0	\$5.5

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
5399	Miscellaneous General Merchandise Stores	None	\$2.0	\$3.5
Major Group 54—Food Stores				
5411	Grocery Stores	None	\$7.5	\$13.5
5422	Freezer and Locker Meat Provisioners	None	\$2.0	\$3.5
5423	Meat and Fish (Seafood) Markets	None	\$2.0	\$3.5
5431	Fruit Stores and Vegetable Markets	None	\$2.0	\$3.5
5441	Candy, Nut, and Confectionery Stores	None	\$2.0	\$3.5
5451	Dairy Products Stores	None	\$2.0	\$3.5
5462	Retail Bakeries—Baking and Selling	None	\$2.0	\$3.5
5463	Retail Bakeries—Selling Only	None	\$2.0	\$3.5
5499	Miscellaneous Food Stores	None	\$2.0	\$3.5
Major Group 55—Automotive Dealers and Gasoline Service Stations				
5511	Motor Vehicles Dealers (New and Used)	None	¹⁰ 950	\$11.5
5521	Motor Vehicle Dealers (Used Only)	None	\$6.5	\$11.5
5531	Auto and Home Supply Stores	None	\$2.0	\$3.5
5541	Gasoline Service Stations	None	\$2.0	\$3.5
5551	Boat Dealers	None	\$2.0	\$3.5
5561	Recreational and Utility Trailer Dealers	None	\$2.0	\$3.5
5571	Motorcycle Dealers	None	\$2.0	\$3.5
5599	Automotive Dealers, N.E.C. ¹¹	None	\$2.0	\$3.5
Major Group 56—Apparel and Accessory Stores				
5611	Men's and Boys' Clothing and Furnishings Stores	None	\$2.5	\$4.5
5621	Women's Ready-to-Wear Stores	None	\$2.5	\$4.5
5631	Women's Accessory and Specialty Stores	None	\$2.0	\$3.5
5641	Children's and Infants' Wear Stores	None	\$2.0	\$3.5
5651	Family Clothing Stores	None	\$2.5	\$4.5
5661	Shoe Stores	None	\$2.5	\$4.5
5681	Furriers and Fur Shops	None	\$2.0	\$3.5
5699	Miscellaneous Apparel and Accessory Stores	None	\$2.0	\$3.5
Major Group 57—Furniture, Home Furnishings, and Equipment Stores				
5712	Furniture Stores	None	\$2.0	\$3.5
5713	Floor Covering Stores	None	\$2.0	\$3.5
5714	Drapery, Curtain, and Upholstery Stores	None	\$2.0	\$3.5
5719	Miscellaneous Home Furnishing Stores	None	\$2.0	\$3.5
5722	Household Appliance Stores	None	\$2.5	\$4.5
5732	Radio and Television Stores	None	\$2.5	\$4.5
5733	Music Stores	None	\$2.0	\$3.5
Major Group 58—Eating and Drinking Places				
5812	Eating Places (Except Food Services)	None	\$2.0	\$3.5
5812	Food Services	\$5.5	\$2.0	\$10.0
5813	Drinking Places (Alcoholic Beverages)	None	\$2.0	\$3.5
Major Group 59—Miscellaneous Retail				
5912	Drug Stores and Proprietary Stores	None	\$2.0	\$3.5
5921	Liquor Stores	None	\$2.0	\$3.5
5931	Used Merchandise Stores	None	\$2.0	\$3.5
5941	Sporting Goods Stores and Bicycle Shops	None	\$2.0	\$3.5
5942	Book Stores	None	\$2.0	\$3.5
5943	Stationery Stores	None	\$2.0	\$3.5
5944	Jewelry Stores	None	\$2.0	\$3.5
5945	Hobby, Toy, and Game Shops	None	\$2.0	\$3.5
5946	Camera and Photographic Supply Stores	None	\$2.0	\$3.5
5947	Gift, Novelty, and Souvenir Shops	None	\$2.0	\$3.5
5948	Luggage and Leather Goods Stores	None	\$2.0	\$3.5
5949	Sewing, Needlework, and Piece Goods Stores	None	\$2.0	\$3.5
5961	Mail Order Houses	None	\$7.5	\$12.5
5962	Automatic Merchandising Machine Operator	None	\$2.0	\$3.5
5963	Direct Selling Establishments	None	\$2.0	\$3.5
5982	Fuel and Ice Dealers, Except Fuel Oil Dealers and Bottled Gas Dealers	None	\$2.0	\$3.5
5983	Fuel Oil Dealers	None	100	\$3.5
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	None	\$2.0	\$3.5
5992	Florists	None	\$2.0	\$3.5
5993	Cigar Stores and Stands	None	\$2.0	\$3.5
5994	New Dealers and Newsstands	None	\$2.0	\$3.5
5999	Miscellaneous Retail Stores, N.E.C.	None	\$2.0	\$3.5
Division H—Finance, Insurance, and Real Estate ¹²				
Major Group 63—Insurance				
6331	Fire, Marine, and Casualty Insurance	None	None	1,500

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
Major Group 64—Insurance Agents, Brokers, and Service				
6411	Insurance Agents, Brokers, and Service	None	None	\$3.5
Major Group 65—Real Estate				
6515	Operators of Residential Mobile Home Sites	None	None	\$3.5
	Leasing of Building Space to the Federal Government by Owners ¹²	None	None	\$10.0
Division I—Services				
Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places				
7011	Hotels, Motels, and Tourist Courts	\$2.0	\$3.0	\$3.5
7021	Rooming and Boarding Houses	\$2.0	\$3.0	\$3.5
7032	Sporting and Recreational Camps	\$2.0	\$2.0	\$3.5
7033	Trailer Parks and Camp Sites for Transients	\$2.0	\$1.5	\$3.5
7041	Organization Hotels and Lodging Houses, on Membership Basis	\$2.0	\$2.0	\$3.5
Major Group 72—Personal Services				
7211	Power Laundries, Family and Commercial	\$4.0	\$3.0	\$7.0
7212	Garment Pressing, and Agents for Laundries and Dry Cleaners	\$2.0	\$2.0	\$3.5
7213	Linen Supply	\$2.0	\$2.0	\$7.0
7214	Diaper Service	\$4.0	\$2.0	\$7.0
7215	Coin-operated Laundries and Dry Cleaning	\$2.0	\$2.0	\$3.5
7216	Dry Cleaning Plants, Except Rug Cleaning	\$1.5	\$2.0	\$2.5
7217	Carpet and Upholstery Cleaning	\$1.5	\$2.0	\$2.5
7218	Industrial Launderers	\$4.0	\$2.0	\$7.0
7219	Laundry and Garment Services, N.E.C.	\$2.0	\$2.0	\$3.5
7221	Photographic Studios, Portrait	\$2.0	\$2.0	\$3.5
7231	Beauty Shops	\$2.0	\$2.0	\$3.5
7241	Barber Shops	\$2.0	\$2.0	\$3.5
7251	Shoe Repair Shops, Shoe Shine Parlors, and Hat Cleaning Shops	\$2.0	\$2.0	\$3.5
7261	Funeral Service and Crematories	\$2.0	\$2.0	\$3.5
7299	Miscellaneous	\$2.0	\$2.0	\$3.5
Major Group 73—Business Services				
7311	Advertising Agencies	\$2.0	\$2.0	\$3.5
7312	Outdoor Advertising Services	\$2.0	\$2.0	\$3.5
7313	Radio, Television, and Publishers' Advertising Representatives	\$2.0	\$2.0	\$3.5
7319	Advertising, N.E.C.	\$2.0	\$2.0	\$3.5
7321	Consumer Credit Reporting Agencies, Mercantile Reporting Agencies, and Adjustment and Collection Agencies	\$2.0	\$2.0	\$3.5
7331	Direct Mail Advertising Services	\$2.0	\$2.0	\$3.5
7332	Blueprinting and Photocopying Services	\$2.0	\$2.0	\$3.5
7333	Commercial Photographs, Art, and Graphics	\$2.0	\$2.0	\$3.5
7339	Stenographic Services; and Reproduction Services, N.E.C.	\$2.0	\$2.0	\$3.5
7341	Window Cleaning	\$2.0	\$2.0	\$3.5
7342	Disinfecting and Exterminating Services	\$2.0	\$2.0	\$3.5
7349	Cleaning and Maintenance Services to Dwellings and Other Buildings, N.E.C.	\$4.5	\$2.0	\$8.0
7351	News Syndicates	\$2.0	\$2.0	\$3.5
7361	Employment Agencies	\$2.0	\$2.0	\$3.5
7362	Temporary Help Supply Services	\$2.0	\$2.0	\$3.5
7369	Personnel Supply Services, N.E.C. ¹⁴ (includes base maintenance)	\$7.5	\$2.0	\$13.5
7372	Computer Programming and Other Software Services	\$4.0	\$2.0	\$7.0
7374	Data Processing Services	\$4.0	\$2.0	\$7.0
7379	Computer Related Services, N.E.C.	\$7.0	\$2.0	\$12.5
7391	Research and Development Laboratories ¹⁵	500	\$2.0	500
7392	Management, Consulting, and Public Relations Services	\$2.0	\$2.0	\$3.5
7393	Detective Agencies and Protective Services	\$4.5	\$2.0	\$6.0
7394	Equipment Rental and Leasing Services	\$2.0	\$2.0	\$3.5
7395	Photofinishing Laboratories	\$2.0	\$2.0	\$3.5
7396	Trading Stamp Services	\$2.0	\$2.0	\$3.5
7397	Commercial Testing Laboratories	\$2.0	\$2.0	\$3.5
7399	Business Services, N.E.C.	\$2.0	\$2.0	\$3.5
Major Group 75—Automotive Repair, Services, and Garages				
7512	Passenger Car Rental and Leasing, Without Drivers	\$7.0	\$2.0	\$12.5
7513	Truck Rental and Leasing, Without Drivers	\$7.0	\$2.0	\$12.5
7519	Utility Trailer and Recreational Vehicle Rental	\$2.0	\$2.0	\$3.5
7523	Parking Lots	\$2.0	\$2.0	\$3.5
7525	Parking Structures	\$2.0	\$2.0	\$3.5
7531	Top and Body Repair Shops	\$2.0	\$2.0	\$3.5
7534	Tire Retreading and Repair Shops	\$4.0	\$2.0	\$7.0
7535	Paint Shops	\$2.0	\$2.0	\$3.5
7538	General Automotive Repair Shops	\$2.0	\$2.0	\$3.5
7539	Automotive Repair Shops, N.E.C.	\$2.0	\$2.0	\$3.5
7542	Car Washes	\$2.0	\$2.0	\$3.5
7549	Automotive Services, Except Repair and Car Washes	\$2.0	\$2.0	\$3.5
Major Group 76—Miscellaneous Repair Services				
7622	Radio and Television Repair Shops	\$2.0	\$2.0	\$3.5

COMPARISON OF PROPOSED STANDARDS WITH CURRENT STANDARDS BY SIC INDUSTRY—Continued

SIC	Description	Size standards in number of employees or millions of dollars		
		Current standard		Proposed standard
		Proc.	Loan	
7623	Refrigeration and Air Conditioning Service and Repair Shops	\$2.0	\$2.0	\$3.5
7629	Electrical and Electronic Repair Shops, N.E.C.	\$2.0	\$2.0	\$3.5
7631	Watch, Clock, and Jewelry Repair	\$2.0	\$2.0	\$3.5
7641	Reupholstery and Furniture Repair	\$2.0	\$2.0	\$3.5
7692	Welding Repair	\$2.0	\$2.0	\$3.5
7694	Armature Rewinding Shops	\$2.0	\$2.0	\$3.5
7699	Repair Shops and Related Services, N.E.C.	\$2.0	\$2.0	\$3.5
Major Group 78—Motion Pictures				
7813	Motion Picture Production, Except for Television	\$8.0	\$8.0	\$14.5
7814	Motion Picture and Tape Production for Television	\$8.0	\$8.0	\$14.5
7819	Services Allied to Motion Picture Production	\$8.0	\$8.0	\$14.5
7823	Motion Picture Film Exchanges	\$8.0	\$2.0	\$14.5
7824	Film or Tape Distribution for Television	\$8.0	\$2.0	\$14.5
7829	Services Allied to Motion Picture Distribution	\$2.0	\$2.0	\$3.5
7832	Motion Picture Theaters, Except Drive-in	\$2.0	\$2.0	\$3.5
7833	Drive-in Motion Picture Theaters	\$2.0	\$2.0	\$3.5
Major Group 79—Amusement and Recreation Services, Except Motion Pictures				
7911	Dance Halls, Studios, and Schools	\$2.0	\$2.0	\$3.5
7922	Theatrical Producers (Except Motion Pictures), Bands, Orchestras, and Entertainers	\$2.0	\$2.0	\$3.5
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	\$2.0	\$2.0	\$3.5
7932	Billiard and Pool Establishments	\$2.0	\$2.0	\$3.5
7933	Bowling Alleys	\$2.0	\$2.0	\$3.5
7941	Professional Sports Clubs and Promoters	\$2.0	\$2.0	\$3.5
7993	Coin-operated Amusement Devices	\$2.0	\$2.0	\$3.5
7996	Amusement Parks	\$2.0	\$2.0	\$3.5
7999	Amusement and Recreation Services, N.E.C.	\$2.0	\$2.0	\$3.5
Major Group 80—Health Services				
8011	Offices of Physicians	\$2.0	\$2.0	\$3.5
8021	Offices of Dentists	\$2.0	\$2.0	\$3.5
8031	Offices of Osteopathic Physicians	\$2.0	\$2.0	\$3.5
8041	Offices of Chiropractors	\$2.0	\$2.0	\$3.5
8042	Offices of Optometrists	\$2.0	\$2.0	\$3.5
8049	Offices of Health Practitioners, N.E.C.	\$2.0	\$2.0	\$3.5
8051	Skilled Nursing Care Facilities	\$2.0	\$1.5	\$3.5
8059	Nursing and Personal Care Facilities, N.E.C.	\$2.0	\$1.5	\$3.5
8062	General Medical and Surgical Hospitals	\$2.0	1 ¹ 150	\$3.5
8063	Psychiatric Hospitals	\$2.0	1 ¹ 150	\$3.5
8069	Specialty Hospitals, Except Psychiatric	\$2.0	1 ¹ 150	\$3.5
8071	Medical Laboratories	\$2.0	\$1.5	\$3.5
8072	Dental Laboratories	\$2.0	\$1.5	\$3.5
8081	Outpatient Care Facilities	\$2.0	\$2.0	\$3.5
8091	Health and Allied Services, N.E.C.	\$2.0	\$2.0	\$3.5
Major Group 81—Legal Services				
8111	Legal Services	\$2.0	\$2.0	\$3.5
Major Group 82—Educational Services				
8299	Schools and Educational Services, N.E.C. Except Flight Training	\$2.0	\$2.0	\$3.5
8299	Flight Training Services	\$7.0	\$2.0	\$12.5
Major Group 89—Miscellaneous Services				
8911	Engineering Services, Except for Military and Aerospace Equipment and Except for Military Weapons	\$7.5	\$3.5	\$3.5
8911	Engineering Services for Military and Aerospace Equipment and for Military Weapons (Except Marine Engineering)	\$7.5	\$3.5	\$13.5
8911	Marine Engineering and Naval Architecture	\$9.0	\$3.5	\$11.0
8911	Architectural Services (Except Naval) and Surveying Services	\$2.0	\$2.0	\$3.5
8931	Accounting and Auditing Services ¹⁷	\$2.0	\$2.0	\$5.0
8931	Bookkeeping Services	\$2.0	\$2.0	\$3.5
8999	Services, N.E.C.	\$2.0	\$2.0	\$3.5

Footnotes

¹ Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.

² SIC Division D, Manufacturing: "Rebuilding on a factory basis or equivalent." For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

³ SIC-2033: For purposes of Government procurement for food canning and preserving under SIC 2033, the standard of 500 employees shall be exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

⁴ SIC-2911: For purposes of Government procurement, the firm may not have more than 1500 employees nor may it have more than 50,000 barrels per day. This capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs into the process may not exceed 50,000 barrels. In addition to the direct owned capacity of the concern in question, counted capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput or other form of processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this would have to be included in the concern's own capacity. Any exchanges on a refined-product-for-refined-product basis are not permitted in the satisfaction of the contract. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

⁵ SIC-3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112, provided that (1) the value of tires within Census Classification Codes 30111 and 30112 which it manufactured during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period and (3) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

⁶ SIC-40212: The Component "Garbage and Refuse, Collecting and Transporting: Without Disposal" shall have a size standard of \$6.0 million. This is the same size standard as SIC-4953, Refuse Systems.

* Offshore Marine Services: The applicable size standard shall be \$14 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

* SIC-4521: Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. For other services requiring the use of one or more helicopters or fixed-wing aircraft, a size standard of \$6.5 million shall apply. This does not include offshore marine transportation services as defined in footnote 7.

* SIC-4953: "Garbage and Refuse, Collecting and Transportation: Without Disposal," a component of SIC-4212, has the same size standard as SIC-4953.

10 Units.

11 SIC-5599: For retail firms whose principal line of business is the retail sale of aircraft, a \$5 million size standard shall apply.

12 Most industries in Division H—Finance, Insurance, and Real Estate—are excluded from SBA assistance.

13 Leasing of building space to the Federal Government by owners—For the purpose of Government procurement, a size standard of \$10 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standard for these procurements shall apply to the owner of the property and not to those acting as an agent for the owner. There is no size standard concerning the agent.

14 If one of the activities in base maintenance, as defined in SIC-7369, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base maintenance" constitutes three or more separate activities. These activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include but are not limited to such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, the Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service.

If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpeting, etc.), all such specialized special trade construction activities will be considered a single activity, which is *Base Housing Maintenance*. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance.

15 SIC-7391: For research and development contracts requiring the delivery of a manufactured product, the size standard to use is that of the manufacturing industry in which the specific product is classified.

Research and development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems or other nonphysical research, or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the SBR program only, a different definition has been established by law. See Part 121.7.

16 Beds.

17 This proposed rule supersedes the proposed rule of November 2, 1982 (47 FR 49664) which proposed a size standard revision of 100 employees for the accounting, auditing, and bookkeeping industry (SIC-8931).

§121.3 General definitions

(a) *Affiliates*: Concerns, other than investment companies licensed, or state development companies qualifying under the Small Business Investment Act of 1958 and the regulations issued pursuant thereto, or investment companies registered under the Investment Company Act of 1940, are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other or (2) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: Provided, however, That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(i) *Nature of Control*. Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since he can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the

concern at the will of the party with the power to control.

(ii) *Meaning of "party or parties."* The term "party" or "parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(iii) *Control through stock ownership.*—(A) A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

(B) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls or has the power to control is large as compared with any other outstanding block of stock. If two or more parties each owns, controls or has the power to control less than 50 percent of the voting stock of a concern and such minority block is (1) equal or substantially equal in size, and (2) large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(C) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

Example. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock, but no officer or director has a

block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(iv) *Stock options, convertible debentures, and agreements to merge.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

Example. If company "A" holds an option to purchase a controlling interest in company "B" and such option can be exercised at any time by company "A", the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B". Further, if company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger had taken place.

(v) *Voting trusts.* If the purpose of a voting trust, or similar agreement is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the

best interest of the small business program.

(vi) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing or has the power to direct or influence the operation of such other concern.

(A) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(B) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(C) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities, whether for a fee or otherwise.

(vii) *Control through contractual relationships.*—(A) Definition of a joint venture for size determination purposes: A joint venture for size determination purpose is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(B) *Joint ventures—financial assistance.* For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(C) *Joint venture—procurement and property sale assistance.* Concerns bidding on a particular procurement or

property sale as joint venturers are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, as ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties.

(D) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(E) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(B) "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation joint venture, association, or cooperative. For the purpose of making affiliation findings (see subsection (a) of this section) any business entity whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

(c) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists,

consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

§ 121.4 Small business for financial programs.

(a) The provisions within this section apply to size eligibility for SBA financial assistance, which includes the following SBA programs: Financial and Guarantee Assistance, Small Business Investment Companies, Development Companies, Surety Bonding, Pollution Control, and Minority Small Business and Capital Ownership Development. Such size eligibility is determined with reference to the size standard for the primary industry of the concern (including any affiliates) under the SIC code size standards in the table contained in § 121.2. The size standards are generally in terms of four-digit industries set forth in the Standard Industrial Classification Manual. In addition to meeting the size standards of this regulation, a small business concern must be not dominant in its field of operation. (See § 121.3(c).) If a concern is engaged in a number of industries (or including its affiliates is engaged in several industries), the size standard shall be that of the concern's (or concerns') primary industry. The primary industry determination considers the distribution among industries during the most recent fiscal year and 12 month period of receipts and employees of the concern (or of an entire affiliated group if the group in its entirety has a different primary industry). The determination may also consider other factors (e.g., patents, contract awards, assets).

(b) After the appropriate size standard is ascertained, the eligibility of the concern under that size standard must be considered. In determining whether a concern is eligible under its applicable primary industry size standard, employees or receipts (or other size measurement under subsection (e) of this section, e.g., net worth) of the concern and its affiliates must be aggregated. (Section 121.3(a) sets forth the SBA affiliation definition.)

(c) A concern which applies for an SBA loan or guarantee to refinance an existing SBA loan or guarantee but which, since the date of the original financing, has by natural growth (as distinguished from, e.g., merger) grown to a size which exceeds the applicable size standard, is considered as small for the purpose of refinancing if SBA

administratively determines that refinancing is necessary to protect the Government's financial interest.

(d) The applicable size standards for the purpose of all SBA financial and guarantee programs excluding the Section 8(a) Program and the Surety Bond Guarantee Assistance Program, are increased by 25 percent whenever the concern agrees to use the assistance within a "labor surplus area," or "redevelopment area." "Redevelopment area" means a "redevelopment area" in accordance with the Public Works Economic Development Act of 1985 (Pub. L. 89-136, 79 Stat. 570, 42 U.S.C. 3211). "Labor surplus areas" are defined monthly in the Department of Labor publication "Area Trends."

(3) A small business concern for the purpose of receiving financial or other assistance from small business investment companies or development companies, or pollution control guarantee assistance, is one which: (1) Together with its affiliates, does not have net worth in excess of \$6 million, and does not have an average net income after Federal income taxes for the preceding 2 years in excess of \$2 million (average net income to be computed without benefit of any carryover loss); or (2) a concern is also eligible for these programs if it otherwise qualifies under this section as a small business concern for financial assistance.

(f) The concern's size status may be determined at the SBA District Office, the SBA Regional Office, or by any other SBA office or financial institution appropriately designated. The determination may be made at the time of application for assistance. The concern's size eligibility is determined as of the time of its application or self-certification as small by the concern and the time of approval of the financing. Except for firms participating in the section 8(a) program, subsequent changes in size will not affect a firm's size status.

(g) For purposes of the Minority Small Business and Capital Ownership Development Assistance program (the program authorized by section 8(a) of the Small Business Act),

(1) In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined for purposes of Government procurement in § 121.2 of the SBA Rules and Regulations. The particular size standard to be applied will be based on the primary industry classification of the applicant concern.

(2) In order to continue to participate in the section 8(a) program once a

concern is admitted to the program, the concern must certify to SBA that it is a small business for the purpose of performing each individual contract which it is awarded. SBA, in turn, will verify such certifications.

(h) For purposes of surety bond guarantee assistance

(1) Any construction concern (general of special trade) is small if its annual receipts average for its preceding three fiscal years does not exceed \$5 million.

(2) Any concern performing a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three fiscal years does not exceed \$5 million.

(3) For other surety bond guarantee assistance, the provisions of § 121.4 (a) and (b) are applicable in determining eligibility as a small business concern.

§ 121.5 Small business for government procurement.

(a) A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. The size status of a concern (including its affiliates) is determined as of the date of written self-certification as a small business as part of a concern's submission of a bid or offer. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of an SBA inquiry, is not considered an SBA size determination.

(b)(1) The procurement is classified for size standard purposes in the most appropriate SIC code industry category (§ 121.2); giving consideration to the industry descriptions in the regulation and the SIC Manual, the product or service description in the solicitation and attachments thereto, the relative value of items in the procurement and the principal nature of the procurement. In borderline cases, consideration may be given to previous Government procurement classifications of the same or similar products or services, additional information on the industries and on the product or service being procured, and to evaluations on which industry classification would best serve the purposes of the Small Business Act. A concern which is bidding on a contract for a procurement in an SIC industry under § 121.2 must meet the size standard designated for that industry. The size standard and SIC industry designation are set forth in the solicitation.

(2) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when:

(i) Its average annual receipts (including affiliates) for its three most recently completed fiscal years does not exceed the size standard for the appropriate wholesale industry identified with the product being procured as defined in § 121.2, and

(ii) In the case of Government procurement reserved (i.e., set aside) for small businesses, such nonmanufacturer must furnish, in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term "nonmanufacturer" includes a concern which can manufacture or produce the product referred to in the specific procurement but does not do so in connection with that procurement. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act.

(iii) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given procurement if it meets the size qualifications of a small nonmanufacturer for the procurement and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

(iv) If the procurement is subject to, and is actually processed under, "small purchase procedures" as defined in the Defense Acquisition Regulation (DAR), Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR), as applicable, such nonmanufacturer may furnish any domestically produced or manufactured product.

(v) For the purpose of receiving a Certificate of Competency on an unrestricted procurement, a small business nonmanufacturer may furnish any domestically produced or

manufactured product. The applicable size standard shall be that of the wholesale industry of the item being procured.

(c) If a procurement calls for two or more items with different size standards and the bidder can bid on any items, the bidder must meet the size standard for each item for which it submits a bid. If the procurement calls for more than one item and a bidder is required to bid on all items, the bidder can qualify as small business for such procurement if it meets the size standard for the item accounting for the greatest percentage of the total contract value.

(d) The determination of the appropriate classification of a product or service shall be made by the contracting officer of the procuring agency or his authorized representative. Both the SIC industry classification and the applicable size standard (number of employees, average annual receipts, etc.), shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed to SBA in the manner provided in § 121.11; provided, however, that an unclear or incomplete classification action by the contracting officer may be supplied by the SBA if necessary in connection with a size determination or size appeal.

(e) In the submission of a bid or proposal on a Government procurement, a concern which meets the designated size standard and which either has not been determined by SBA to be ineligible under the same or a lower size standard, or has been determined to be ineligible but subsequently has been recertified by SBA, may represent that it is a small business concern within the size standard designated for the procurement. In the absence of a written protest by other bidders or other credible information which would cause a contracting officer to question the veracity of the self-certification, a contracting officer shall accept the self-certification at face value for the particular procurement involved. The contracting officer shall refer written protests to SBA; and, if he has cause, may refer his own protest to SBA for a size determination. The protest should provide specific factual reasons enabling the protested concern to respond to the particular allegations that it is not a small business concern within the size standard applicable to the procurement.

(f) If a concern has been determined by SBA to be ineligible as a small business under a particular size standard, and it has already self-certified as a small business on a pending procurement subject to the same or lower number of employees or

annual receipts size standard (whichever is applicable), it shall immediately notify the contracting officer of such adverse size determination.

(g) For subcontracting purposes pursuant to Section 8(d) of the Small Business Act, a concern is small

(1) in connection with subcontracts of \$10,000 or less which relate to Government procurements if, including its affiliates, its number of employees does not exceed 500 persons; and

(2) In connection with subcontracts exceeding \$10,000 which relate to Government procurements if its number of employees or average annual receipts, (including its affiliates), does not exceed the size standard under § 121.2 for the product or service it is providing on the subcontract. Concerns may self-certify their status as a small subcontractor for the procurement.

(3) The contracting officer or other affected party in connection with small business subcontracting requirements, pursuant to section 8(d) of the Small Business Act, may protest a written representation of small business status, or the refusal to accept such written representation, of a concern offering as a subcontractor on a particular procurement. The protest and related information shall be referred to the SBA Regional Office in which the concern has its principal office for a size determination or other appropriate SBA action.

§ 121.6 Small business for sales or lease of Government property.

In the submission of a bid or proposal for the purchase or lease of Government-owned property, a small business concern is one which meets the criteria provided in this section. The size status of a concern (including its affiliates) is determined as of the date of written self-certification as a small business as part of a concern's submission of a bid or offer. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of an SBA inquiry is not considered an SBA size determination. In the absence of a written protest by other bidders or other credible information which would cause a contracting officer to question the veracity of a concern's self-certification as a small business, a contracting officer shall accept the self-certification at face value. The contracting officer shall refer written protests to SBA; and, if he has cause, may refer his own protest to SBA for a size determination. The protest should provide specific factual reasons enabling the protested concern to

respond to the particular allegations that it is not a small business concern for the sale or lease on which protested. If a concern has been determined by SBA to be ineligible under the applicable size standard and has not been recertified, it shall not self-certify under that size standard until it has been recertified by SBA; and shall immediately notify the contracting officer on any pending sales or leases where it had self-certified under the same size standard.

(a) *Sales of Government-owned property other than timber.* A small business concern for the purpose of the sale of Government-owned property other than timber is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the following criteria.

(1) *Manufacturers.* Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: *Provided, however,* That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1,500 persons and it does not have more than 50,000 barrels per day crude oil or bona fide feed stock capacity * from owned and/or leased facilities, or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except on a refined-product-for-refined-product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

(2) *Other than manufacturers.* Any concern which is primarily not a manufacturer (except as specified in paragraph (a)(3) of this section) is small if its average annual receipts for its preceding 3 fiscal years do not exceed \$2 million.

(3) *Stockpile purchasers.* Any concern primarily engaged in the purchase of materials which are not domestic products is small if its annual receipts for its preceding 3 fiscal years do not exceed \$42 million.

(b) *Sales of Government-owned timber.* (1) In connection with sale of Government-owned timber, a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;²

² See § 121.2 (footnotes) for definition of crude oil capacity and bona fide feed stock capacity.

³ "Forest Products Industry" means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw material.

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of paragraph (b)(1) of this section, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of this paragraph more than 30 percent (50 percent in Alaska) of such timber. The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer such as the sale of the assets of (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber (or sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in paragraph (b)(1) of this section, and

(ii) It agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under paragraph (b)(1) of this section as a small business. This provision assumes that the successful bidder will remain a small business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber (or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction. Any concern which self-certifies as a small business concern for the purpose of award under a small business set-aside sale of Government

timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the names, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and log species, grades, and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber or timbers by a concern other than the bidder, the bidder must maintain records to show the name, address, and the size status of the concern manufacturing the sawlogs into lumber or timbers.

(c) *Special salvage timber sales.* (1) In connection with sale of Government-owned special salvage timber, designated by the USFS as SSTs, a small business is a concern that:

(i) Is primarily engaged in the logging or forests products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 25 persons during any pay period for the last 12 months.

(2) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small business, restricting the disposal of timber and, when the special salvage timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of paragraph (c)(1) of this section, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of paragraph (b)(1) of this section more than 30 percent of such timber (50 percent in Alaska). The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer such as the sale of the assets of (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber (or sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(iii) It agrees that as an eligible logger, it will accomplish a significant portion of the logging operation, exclusive of hauling, with its own employees.

Significant logging of timber means using its own employees to accomplish two or more of the following element: (A) felling and bucking, (B) yarding, (C) loading. It further agrees that such SSTs sale logging elements not accomplished with its own employees will be subcontracted only to concerns eligible for preferential award of an SSTs sale.

(3) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, restricting the disposal of timber, and when the special salvage timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in paragraph (c)(1) of this section, and

(ii) It agrees that it will manufacture a significant portion of the logs with its own employees. Manufacture of logs means, at a minimum, a breakdown of the log into the rough cut of the finished product. This provision assumes that the successful bidder will remain a small business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber (or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction. Any concern which self-certifies as a small business concern for the purpose of award under a small business set-aside sale of Government timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the name, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and the log species, grades, and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs but is to be manufactured into lumber or timbers by a concern other than the bidder, the bidder must maintain records to show the name, address, and size status of the concern manufacturing the sawlogs into lumber or timbers.

(iii) It further agrees that it will accomplish the logging of SSTs timber, exclusive of hauling, with its own

employees, or will subcontract such logging only to concerns eligible for preferential award of an SSTS sale.

(4) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, the special salvage timber may be disposed of without restriction when there are less than two qualified mills in the market area.

(d) Any firm bidding to lease Government land for purposes of coal mining is classified as small if:

(1) It is independently owned and operated;

(2) It is not dominant in its field of operation;

(3) Together with its affiliates, its number of employees does not exceed 250 persons;

(4) It maintains management and control of the actual mining operation at the tract; and

(5) Any transfer of the lease from the holder of the original set-aside must be to another small business within the meaning of this paragraph.

(e) In the submission of a bid or proposal for a Government lease of uranium prospecting or mining rights, a concern whose number of employees does not exceed 100 persons may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular lease involved.

§ 121.7 Small Business Innovation Research Programs.

(a) A small business concern for purposes of award of any funding agreement under a solicitation pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97-291, 15 U.S.C. 638(e)-(k)) is one which, including its affiliates, has a number of employees not exceeding 500. The term "affiliates" is defined in § 121.3(a) of this title. The term "number of employees" is defined in § 121.2(b) of this title.

(b) The Small business Innovation Development Act of 1982 defines "research" or "research and development" as any

... activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studies; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement or prototypes and new processes to meet specific

requirements (15 U.S.C. 638, as amended by 96 Stat. 218, Sec. 4(e)(5)).

(c) SBA has issued a policy directive (Policy Directive No. 65-01; 47 FR 52986, November 24, 1982) prescribing criteria for solicitations and award of funding agreements pursuant to the Small Business Innovation Research (SBIR) Program. Under the SBIR program, the term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

§ 121.8 Size Determinations.

(a) Original size determinations shall be made by the regional director, or his delegate, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, except that for lease guarantee reinsurance purposes such determinations shall be made by the Associate Administrator for Finance and Investment. The regional director or his delegate, or the Associate Administrator for Finance and Investment promptly shall notify in writing, by certified mail, return receipt requested, the concern in question and other interested persons of his decision. Such determination shall become effective immediately and shall remain in full force and effect unless and until reversed by the Small Business Administration Size Appeals Board. For the purpose of Government procurements or sales, a size determination shall be made only in the event of a protest pursuant to these regulations, a request for recertification, a request for a Certificate of Competency, or if the Associate Administrator for Procurement Assistance or his delegate or a regional director or his delegate determines it necessary to question the size status of a concern for the purpose of any Small Business contracting program or Procurement Source Program, or for property sales purposes or for any other purpose relating to Government procurement or sales. For the purpose of SBA financial assistance, a formal size determination under this provision shall be made by the Regional Office only (1) where the regular review of the loan file or other substantial evidence indicates the need therefor and a request is made by the appropriate SBA financial assistance official, or (2) where an initial determination is made by the SBA financial assistance officer that the concern is other than small and a request is made by the loan applicant.

Initial nonformal financial assistance size determinations may not be appealed to the SBA Size Appeals Board.

(b) Once properly instituted (i.e., by filing of a protest or by an official request for a determination) formal size determinations may be completed, even if the particular application, bid, or offer is subsequently withdrawn, or the Government procurement or sale is cancelled or awarded.

(c) The size determination will be based primarily on facts and allegations supplied by the parties to the SBA. If deemed necessary or appropriate SBA may utilize other information in its files and may make inquiries including requests to the parties or other persons for additional specific information. The burden of establishing its small business size by submitting full information to SBA shall be upon the concern whose size status is under consideration. Specific signed factual evidence will be weighed more heavily by SBA than general unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure. The SBA formal size determination shall be based upon the record, including reasonable inferences therefrom, and shall state in writing the basis for its findings and conclusions.

(d) If SBA has made a formal size determination that a particular concern is not small, the concern will not be deemed eligible within such applicable size standard for any assistance under the Small Business Act or the Small Business Investment Act of 1958, unless it is thereafter recertified by SBA as a small business. After such an adverse size determination, the concern shall not self-certify itself as small within the same or a lower employee or annual receipts size standard (whichever is applicable) unless it is recertified. Applications for recertification shall be made to the SBA Regional Office which made the original size determination. Applications for recertification shall be accompanied by a current completed SBA Form 355 and by any other pertinent information necessary to show a significant change in its ownership, management, contractual relations, or in other factors bearing on its status as a small concern. If good cause is shown in extraordinary cases, as determined by the Chairperson of the Size Appeals Boards, the original decision on the application for recertification may be made by the Size Appeals Board.

(1) Recertification shall not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible nonmanufacturer size determination on a particular Government procurement.

(2) If SBA makes a size determination denying an application for recertification, such adverse size determination may be appealed to the Size Appeals Board. Recertifications have future effect only and, except as to timber sales size determinations, are not appealable to the Board by other than the concern in question (however, the concerns' later self-certification on subsequent set-aside procurements or property sales may be protested in the usual manner).

(e) Size determinations for compliance purposes. Upon request by other Government agencies, SBA size determinations under Part 121 may be made to assist in the enforcement or administration of regulations or contracts, as well as in connection with award of contracts or granting of assistance. SBA size determinations are findings on the size status of a concern (including its affiliates) as of a definite time and regarding a specific applicable SBA size standard, and do not rule on compliance, contractual or administrative matters which are handled by the other agencies.

§ 121.9 Protest of small business status.

(a) *How to protest.* Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular Government procurement or sale. Such challenge shall be made by delivering a protest to the contracting officer responsible for the particular procurement or sale involved. In order to apply to the procurement or sale in question, such protest must be filed prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening, except that in the case of negotiated procurements, a protest may be filed within 5 days exclusive of Saturdays, Sundays, and legal holidays after receipt from the contracting officer of notification of the identity of the offeror being protested. Such filing must be delivered to the contracting officer by hand, telegram, or mail within the 5-day period allotted: *Provided, however,* That a protest shall be considered timely if made by telephone to the contracting officer within the 5-day period allotted

and the contracting officer thereafter receives a confirming letter (1) within such 5-day period or (2) postmarked no later than 1 day after the date of such telephone protest. Any contracting officer who receives a protest shall promptly forward such protest to the SBA regional office serving the geographical area in which the principal office of the protested concern, not including its affiliates, is located. A contracting officer may at any time after bid opening question the small business status of any bidder or offeror for the purpose of a particular procurement or sale by filing a protest with the SBA regional office serving the area in which the principal office of the protested concern, not including its affiliates, is located. A protest by a contracting officer shall be timely for the purpose of the procurement or sale in question whether filed before or after award. A protest received after the time limits set forth herein shall not apply to the procurement or sale in question. A concern determined other than small business as a result of such late protest, however, shall be precluded from self-certification in any other procurement or sale in which the size standard is not higher than the standard in the procurement or sale in question. A protest must adequately set forth specific alleged grounds for the protest. A protest merely alleging that the protested concern is not small or is affiliated with unspecified other concerns will not be deemed to adequately specify grounds for the protest. Evidence supporting the protest may be submitted therewith. Protests which do not set forth specific alleged grounds for the protest will be dismissed.

(b) *Notification of protest.* Upon receipt of such protest, the SBA regional director or his delegatee shall immediately notify the contracting officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The regional director or his delegatee shall also advise the protested bidder or offeror of the receipt of the protest and shall forward to the protested bidder or offeror a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested. Such bidder must, within 3 working days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA, must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such

position. If such bidder or offeror does not submit the completed SBA Form 355 within the billing period provided above, or within any additional period of time granted by SBA for cause, SBA will rule the protested concern is other than a small business. If the bidder or offeror does not submit the completed SBA Form 355 within the period provided above, or within any additional period of time provided by SBA upon application for good cause shown, SBA may assume that the disclosure of the Form or any missing part thereof would be contrary to the interests of the party failing to make such disclosure.

(c) *Notification of determination.* After receipt of a protest and responses thereto, SBA shall determine the small business status of the protested bidder or offeror and, by certified mail, return receipt requested, notify the contracting officer, the protestant, and the protested bidder or offeror of its decision within 10 working days, if possible.

(d) If SBA has determined that a concern is ineligible as a small business for the purpose of a particular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative acts to constitute itself a small business.

(e) *Multiple Award Schedules.* Protests will be deemed timely if received by SBA at any time prior to the expiration of the contract period (including renewals) on a multiple award schedule procurement set aside for small business.

§ 121.10 Size standard responsibilities.

(a) Office of Size Standards Staff, Office of the Administrator, shall:

(1) Develop and recommend small business size standards to the Administrator of SBA for promulgation.

(2) Consider and take appropriate action on written requests to change existing size standards or establish new size standards.

(3) Conduct industry hearings pertaining to size standards.

(4) Perform other related functions (e.g., industry studies) as may be appropriate to administer the SBA size standards program.

(b) Requests to change the existing, or establish new, size standards should be addressed to the Director, Size Standards Staff, Office of the Administrator, 1441 L Street, N.W., Washington, D.C. 20416, and should include information on the economic conditions and structure of the entire national industry, as well as specific reasons and justifications for the change or new size standard. The methodology described in the section on "Purpose

and Method of Establishing Size Standards" (§ 121.1) provides basic criteria on the kinds of information desirable to make an appropriate request. If no size standard of an industry has been established in this part, then SBA, upon request, may issue an *ad hoc* or temporary size standard for the industry in question.

(c) The Office of General Counsel, in conjunction with other interested SBA offices, shall develop and recommend to the Administrator regulations and procedures to assist in implementing the size standards.

(d) The Size Appeals Board shall hear and resolve appeals of size determinations concerning the small business size status of individual firms. The Board also hears and resolves appeals concerning the appropriate size standard for particular small business set-aside procurements, and may issue interpretations of the size regulations.

§ 121.11 Appeals.

(a) *Organization.* The Size Appeals Board shall review appeals from all size determinations and product classifications made pursuant to these regulations and shall make final decisions as to whether such determinations or classifications should be affirmed, reversed or modified. The Size Appeals Board only has jurisdiction to consider appeals from formal determinations as to a concern's small business size status and appeals from product or service classification determinations made by contracting officers for the purpose of Government procurements. It has no jurisdiction to consider an appeal from an informal opinion or advice concerning a company's small business size status, an opinion as to a company's future small business size status based on proposed but unexecuted changes in its organization, management or contractual relations, or an appeal based on allegation that the small business size standard established by SBA for a particular industry or field of operation is improper for the purpose intended. Size Appeals Board proceedings are essentially factfinding and nonadversary in nature. The Size Appeals Board shall conduct such proceedings as it determines appropriate to enable it to discharge its duties. The Size Appeals Board shall consist of five members, to wit: The Deputy Administrator (Chairperson); the Associate Administrator for Procurement Assistance (Vice Chairperson); the Associate Administrator for Finance and Investment; the Associate Administrator for Minority Small Business and Capital

Ownership Development; and the Director of the Size Standards Staff. In the event the Vice Chairperson acts as Chairperson in the stead of the Deputy Administrator, the Director of the Office of Procurement and Technical Assistance shall become a member of the Board. Each member shall designate one alternate in writing to act in his stead, and in the event of an emergency, the Chairperson may designate a temporary additional alternate for any member. Each member or his alternate shall have one vote except that the Chairperson or the Vice Chairperson acting in his stead shall vote only in the event of a tie.

(b) *Method of appeal.*—(1) Who may appeal. An appeal may be filed by:

(i) Any concern or other interested party which has protested the small business status of another concern and whose protest has been denied by a regional director or his delegatee;

(ii) Any concern or other interested party which has been adversely affected by a decision of a regional director or his delegatee or by the Associate Administrator for Finance and Investment;

(iii) Any concern or other interested party which has been adversely affected by a decision of a contracting officer regarding product classification; and

(iv) The Small Business Administration Associate Administrator for the Small Business Administration program involved.

(2) *Where to appeal.* Written notices of appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Time for appeal.*—(i) An appeal from a size determination or product classification by a regional director, or his delegatee, may be taken at any time, except that because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offeror in a pending procurement must be within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a regional director or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned. Appeals from a size determination in a pending Government property sale must be within 5 days, exclusive of Saturdays, Sundays, and holidays, after receipt of a decision by a regional director or his delegatee. Unless written notice of such

appeal is received by the Board before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending sale is concerned. An appeal received after the time limits set forth herein shall be acted on, but such determination shall not apply to the procurement or sale in question.

(ii) An appeal from a contracting officer's designation of the Standard Industrial Classification industry into which the product or service being procured is classified, and/or the Small Business Administration size standard applicable thereto may be taken:

(A) Not less than 10 days, exclusive of Saturdays, Sundays, and legal holidays, before bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations, or

(B) Not less than 5 days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations, and

(iii) The timeliness of an appeal shall be determined by the time of receipt of the appeal by the Size Appeals Board: *Provided, however,* That an appeal received after such time limit has expired shall be deemed to be timely and shall be considered if, in the case of mailed appeals, such appeal is sent by registered or certified mail and the postmark thereon indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant, or in the case of telegraphed appeals, the telegram date and time line indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant.

(4) *Appeal.* No particular form is prescribed for the appeal. However, the appellant shall submit to the Board an original and one legible copy of such appeal. A copy of the appeal shall be simultaneously sent by the appellant to the contracting officer, if applicable, and also a simultaneous copy to the appropriate Regional Office. The appeal should include the following information:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name, address, and telephone number of the contracting officer;

(iv) A full and specific statement of the reasons why the decision of a regional director, or his delegatee, the contracting officer or the Associate Administrator for Finance and Investment is alleged to be erroneous;

(v) Arguments in support of such allegations; and

(vi) Action sought by the appellant. Appeals must set forth specifically the alleged ground of material error in the original classification or size determination. The Board generally will not review issues or evidence not previously presented to the SBA office making the original size determination unless such review is determined to be necessary to prevent manifest injury to a party not due to any fault or omission of such party.

(c) *Notice to interested parties.* The Size Appeals Board shall promptly acknowledge receipt of the Notice of Appeal and shall send a copy of such Notice of Appeal to the appropriate regional director or his delegatee and to the contracting officer (if a pending procurement is involved). If the appellant is not the concern whose size status is in question, the Board shall also send a copy of the notice to such concern. The Board shall notify all known interested parties that the appeal has been filed. The Board in its discretion may also provide any of such interested parties with copies of appellant's Notice of Appeal, or parts thereof, when the Board determines that this would be in the interest of fairness or would assist in the performance of its functions.

(d) *Statement of interested parties.* After an appeal has been filed, any other interested parties may file with the Board a signed statement, together with one legible copy thereof, as to why the appeal should or should not be denied. Such statements shall be mailed or delivered to the Size Appeals Board, Small Business Administration, Washington, D.C. 20416, within 5 calendar days of the receipt of appropriate notification of appeal or other action in the proceeding. If the appellant is the concern whose size status is in question, the Board will provide copies of such statements submitted in connection with the appeal or a reconsideration thereof to such appellant.

(e) *Consideration by the Size Appeals Board.*—(1) The Size Appeals Board shall consider the appeal on the written submission of the parties. The Board

may also, in its discretion, conduct an oral inquiry. After consideration of all relevant information, the Board shall promptly render a decision which shall state the reason for such decision. Time limitations on all submissions will be strictly applied. Late submissions and submissions additional to those provided for in the regulation or requested by SBA may be disregarded by the Board to avoid delay in disposition of the case. If deemed necessary the Board may request additional specific information from the parties or other persons. In the case of refusal or failure to promptly furnish such information, the Board may assume that disclosure would be contrary to the interests of the party failing to make such disclosure.

(2) *Procedures in oral inquiries.* In considering size appeals, and in reconsidering size appeals decisions, the Size Appeals Board may hold an oral inquiry to assist it in arriving at facts necessary in deciding the appeal. The following rules shall govern such oral inquiries:

(i) Oral inquiries may be held by the Size Appeals Board upon the request of any party to a size appeal or by the Board on its own motion. The Board will, in its discretion, determine whether an oral inquiry will be of assistance in its determination of a size appeal. The Board shall inform the party making a request for oral inquiry whether its request is granted. If the Board grants the request for an oral inquiry, it will so notify all other interested parties.

(ii) Oral inquiries held by the Board are investigative in nature and not adversary. Such inquiries shall be conducted informally in a manner which will facilitate the Board's factfinding function and insure fairness to all participants.

(iii) Whenever the Board permits the appearance of two or more parties before it in an oral inquiry, cross-examination shall not be permitted between or among such parties; however, any party appearing in such oral inquiry may suggest questions for the Board to direct to other parties which may assist the Board in its determination of relevant facts.

(f) *Decision of the Size Appeals Board.* The decision of the Size Appeals Board shall be predicated upon the entire record, and it shall state in writing the basis for its findings and conclusions. The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Board's decision together with the reasons therefor.

(g) *Reconsiderations.*—(1) Following a decision by the Size Appeals Board that

a firm and its affiliates are not small business within an applicable size standard, any such firm or affiliate may petition the Size Appeals Board for reconsideration upon presentation of appropriate justification therefor. Such petition must be received by the Size Appeals Board within 10 business days following receipt by the firm of the formal written Findings and Decision of the Board. The Findings and Decision of the Board will be prepared and forwarded to the parties within a short period of time following the Board's determination. The petition for reconsideration may be in any form, with an original and one copy. The Board will notify interested parties that a petition for reconsideration has been received.

(2) The Chairperson shall consider the petition for reconsideration upon the statement and other evidence presented by the petitioners and any other evidence the Chairperson, in his discretion, deems necessary.

(3) *Grounds for reconsideration.* Grounds for reconsideration shall be:

(i) A material error of fact in the original decision; or

(ii) Relevant facts not previously considered by the Board and not previously available to the petitioner;

(iii) When a request for reconsideration is made, the petitioning firm must demonstrate that the grounds for reconsideration involve facts which were not previously presented to the Board through no fault or omission of such party.

(4) If the Chairperson denies the request for reconsideration, he shall notify all parties. If the request for reconsideration is granted by the Chairperson, he shall so notify all interested parties, setting forth a reasonable time within which the interested parties may, if appropriate, submit additional information. The Board may, in its discretion, provide interested parties with copies of appropriate information submitted by other parties where it determines that this is necessary in the interest of fairness or to better assist the Board in performing its factfinding functions.

(5) Following its reconsideration of the matter, the Board will promptly render a decision pursuant to paragraph (f) of this section. The decision of the Board shall constitute the final administrative remedy afforded by this Agency.

(h) The following may be summarily dismissed by the Chairperson:

(1) Untimely appeals and untimely petitions for reconsideration;

(2) Appeals not setting forth specifically the alleged grounds of

material error in the initial size or classification determination;

(3) Appeals not within the Board's jurisdiction;

(3) Appeals where the allegation of error has no apparent ground of support in either the record before the Board or under the Regulations of this Part 121;

(5) Appeals on product or service classification/size standard determinations where the contract in question has already been awarded;

(6) Petitions for reconsideration which do not specify material errors of fact in the factual findings and conclusions of the Board's decision or do not specify relevant facts not previously presented to SBA through no fault or omission of the petitioning party; and

(7) Appeals primarily based upon issues or evidence that appellant had unreasonably failed to present to the SBA field office and there is no explanation for this failure. Failure to meet time limitations in making submissions to SBA field offices generally would not be a reasonable explanation.

Such summary dismissal by the Chairperson shall be final insofar as the pending procurement or sale is concerned. The Chairperson shall also refer size determination appeals dismissed solely by reason of untimeliness to the Board for a decision as regards eligibility for future

procurements, sales, or other small business assistance. He shall not, however, refer to the Board untimely appeals from a product or service classification or size standard determination. The parties and other interested persons shall be promptly notified of the Chairperson's action and the basis thereof.

§ 121.12 Small business for paying reduced Patent fees under Title 35, U.S.C.

(a) Pursuant to Pub. L. 97-247, a small business concern for purposes of paying reduced fees under 35 U.S.C. 41 (a) and (b) to the Patent and Trademark Office means any business concern (1) whose number of employees, including those of its affiliates, does not exceed 500 persons and (2) which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section. For the purpose of this section concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The

number of employees of the business concern is the average over the fiscal year of the persons employed during each of the pay periods of the fiscal year. Employees are those persons employed on a full-time, part-time or temporary basis during the previous fiscal year of the concern.

(b) If the Patent and Trademark Office determines that a concern is not eligible as a small business concern within this section, the concern shall have a right to appeal that determination to the Small Business Administration. The Patent and Trademark Office shall transmit its written decision and the pertinent size determination file to the SBA in the event of such adverse determination and size appeal. Such appeals by concerns should be submitted to the SBA at 1441 L Street, N.W., Washington, D.C. 20416 [Attention: SBA Office of General Counsel]. The appeal should state the basis upon which it is claimed that the Patent and Trademark Office initial size determination on the concern was in error and the facts and arguments supporting the concern's claimed status as a small business concern under this section.

Dated: March 4, 1983.

James G. Sanders,
Administrator.

[FR Doc. 83-11794 Filed 5-6-83; 8:45 am]

BILLING CODE 8025-01-M

federal register

**Friday
May 6, 1983**

Part III

Department of Labor

**Employment Standards Administration,
Wage and Hour Division**

**Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions**

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum 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.

New General Wage Determination
Decisions

Delaware: DE83-3014
Minnesota: MN83-2038

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:		
CAB2-5112	July 16, 1982	
CAB2-5120	Aug. 27, 1982	
Colorado:		
CO83-5109	Apr. 8, 1983	
Delaware:		
DE82-3015	June 4, 1982	
Iowa:		
IA83-4022	Mar. 11, 1983	
Dist. of Columbia, Maryland and Virginia:		
DC82-3031	Nov. 12, 1982	
Kentucky:		
KY82-1053	Oct. 1, 1982	
KY82-1054	Oct. 1, 1982	
KY82-1055	Oct. 1, 1982	
Louisiana:		
LA82-4021	May 1, 1982	
LA83-4019	Feb. 4, 1983	
LA82-4053	Nov. 5, 1982	
New Mexico:		
NM83-4032	Apr. 15, 1983	
New York:		
NY83-3003	Mar. 25, 1983	
Rhode Island:		
RI-3042	Aug. 15, 1981	
North Dakota:		
ND81-5131	July 6, 1981	
Virginia:		
VA82-3034	Dec. 3, 1982	
VA82-3033	Dec. 3, 1982	
VA82-3035	Dec. 3, 1982	

Supersedeas Decisions to General Wage
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:

AL82-1034 (AL83-1038) July 30, 1982.
AL82-1035 (AL83-1036) July 30, 1982.
AL82-1036 (AL83-1037) July 30, 1982.
AL82-1037 (AL83-1039) July 30, 1982.

Indiana:

IN90-2062 (IN 83-2030) Sept. 26, 1980.

Oklahoma:

OK83-4027 (OK83-4034) Apr. 8, 1983.

Pennsylvania:

PA80-3059 (PA83-3009) Oct. 3, 1980.

Signed at Washington, D.C. this 29th day of
April 1983.

Dorothy P. Come,

*Assistant Administrator Wage and Hour
Division.*

BILLING CODE 4510-27-M

NEW DECISION

STATE: Minnesota
 COUNTY: See Below
 DATE: Date of Publication
 DECISION NO.: 9083-2038
 DESCRIPTION OF WORK: Building Construction Projects (Does not include single family homes and apartments up to and including 4 stories)

Alkins, Becker, Beltrami, Big Stone, Cass, Chicago, Clay, Clearwater, Cottonwood, Crow Wing, Dodge, Douglas, Goodhue, Grant, Hubbard, Isanti, Jackson, Kittson, Lac Qui Parle, Lake of the Woods, LeSueur, Lincoln, Lyon, Mahan, Marshall, McLeod, Meeker, Miller, Mille Lacs, Morrison, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Polk, Pope, Red Lake, Redwood, Renville, Rice, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Wadena, Wilder, Winona, Wright, & Yellow Medicine

Basic Hourly Rates	Primo Benefits	Basic Hourly Rates	Primo Benefits
AREA 1	\$12.35	AREA 1	\$1.46
AREA 2	13.17	AREA 2	1.30
AREA 3	17.08	AREA 3	2.00
AREA 4	15.70	AREA 4	2.15
AREA 5	16.12	AREA 5	2.825
AREA 6	14.73	AREA 6	1.70
AREA 7	17.45	AREA 7	1.10
AREA 8	16.86	AREA 8	.90
AREA 9	16.88	AREA 9	2.69
AREA 10	16.86	AREA 10	.50
AREA 11	17.165	AREA 11	1.20
AREA 12	16.20	AREA 12	.50
AREA 13	16.86	AREA 13	1.50
AREA 14	16.86	AREA 14	1.70
AREA 15	16.89	AREA 15	.50
AREA 16	13.24	AREA 16	1.50
AREA 17	17.04	AREA 17	1.20
AREA 18		AREA 18	
AREA 19		AREA 19	
AREA 20		AREA 20	
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AREA 96		AREA 96	
AREA 97		AREA 97	
AREA 98		AREA 98	
AREA 99		AREA 99	
AREA 100		AREA 100	

AUGUST WORKERS:

AREA 1

AREA 2

AREA 3

AREA 4

AREA 5

AREA 6

AREA 7

AREA 8

AREA 9

AREA 10

AREA 11

AREA 12

AREA 13

AREA 14

AREA 15

AREA 16

AREA 17

AREA 18

AREA 19

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AREA 39

AREA 40

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AREA 50

NEW DECISION

STATE: DELAWARE
 COUNTY: STATE OF DELAWARE
 DATE: Date of Publication
 DECISION NO.: 9083-2014
 DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION.

Basic Hourly Rates	Primo Benefits	Basic Hourly Rates	Primo Benefits
AREA 1	\$11.40	AREA 1	2.05
AREA 2	10.95	AREA 2	1.43
AREA 3	10.25	AREA 3	2.10
AREA 4	13.00	AREA 4	1.85
AREA 5	12.95	AREA 5	2.75
AREA 6	6.89	AREA 6	1.75
AREA 7	11.70	AREA 7	1.75
AREA 8	11.70	AREA 8	1.75
AREA 9	11.70	AREA 9	1.75
AREA 10	11.70	AREA 10	1.75
AREA 11	11.70	AREA 11	1.75
AREA 12	11.70	AREA 12	1.75
AREA 13	11.70	AREA 13	1.75
AREA 14	11.70	AREA 14	1.75
AREA 15	11.70	AREA 15	1.75
AREA 16	11.70	AREA 16	1.75
AREA 17	11.70	AREA 17	1.75
AREA 18	11.70	AREA 18	1.75
AREA 19	11.70	AREA 19	1.75
AREA 20	11.70	AREA 20	1.75
AREA 21	11.70	AREA 21	1.75
AREA 22	11.70	AREA 22	1.75
AREA 23	11.70	AREA 23	1.75
AREA 24	11.70	AREA 24	1.75
AREA 25	11.70	AREA 25	1.75
AREA 26	11.70	AREA 26	1.75
AREA 27	11.70	AREA 27	1.75
AREA 28	11.70	AREA 28	1.75
AREA 29	11.70	AREA 29	1.75
AREA 30	11.70	AREA 30	1.75
AREA 31	11.70	AREA 31	1.75
AREA 32	11.70	AREA 32	1.75
AREA 33	11.70	AREA 33	1.75
AREA 34	11.70	AREA 34	1.75
AREA 35	11.70	AREA 35	1.75
AREA 36	11.70	AREA 36	1.75
AREA 37	11.70	AREA 37	1.75
AREA 38	11.70	AREA 38	1.75
AREA 39	11.70	AREA 39	1.75
AREA 40	11.70	AREA 40	1.75
AREA 41	11.70	AREA 41	1.75
AREA 42	11.70	AREA 42	1.75
AREA 43	11.70	AREA 43	1.75
AREA 44	11.70	AREA 44	1.75
AREA 45	11.70	AREA 45	1.75
AREA 46	11.70	AREA 46	1.75
AREA 47	11.70	AREA 47	1.75
AREA 48	11.70	AREA 48	1.75
AREA 49	11.70	AREA 49	1.75
AREA 50	11.70	AREA 50	1.75
AREA 51	11.70	AREA 51	1.75
AREA 52	11.70	AREA 52	1.75
AREA 53	11.70	AREA 53	1.75
AREA 54	11.70	AREA 54	1.75
AREA 55	11.70	AREA 55	1.75
AREA 56	11.70	AREA 56	1.75
AREA 57	11.70	AREA 57	1.75
AREA 58	11.70	AREA 58	1.75
AREA 59	11.70	AREA 59	1.75
AREA 60	11.70	AREA 60	1.75
AREA 61	11.70	AREA 61	1.75
AREA 62	11.70	AREA 62	1.75
AREA 63	11.70	AREA 63	1.75
AREA 64	11.70	AREA 64	1.75
AREA 65	11.70	AREA 65	1.75
AREA 66	11.70	AREA 66	1.75
AREA 67	11.70	AREA 67	1.75
AREA 68	11.70	AREA 68	1.75
AREA 69	11.70	AREA 69	1.75
AREA 70	11.70	AREA 70	1.75
AREA 71	11.70	AREA 71	1.75
AREA 72	11.70	AREA 72	1.75
AREA 73	11.70	AREA 73	1.75
AREA 74	11.70	AREA 74	1.75
AREA 75	11.70	AREA 75	1.75
AREA 76	11.70	AREA 76	1.75
AREA 77	11.70	AREA 77	1.75
AREA 78	11.70	AREA 78	1.75
AREA 79	11.70	AREA 79	1.75
AREA 80	11.70	AREA 80	1.75
AREA 81	11.70	AREA 81	1.75
AREA 82	11.70	AREA 82	1.75
AREA 83	11.70	AREA 83	1.75
AREA 84	11.70	AREA 84	1.75
AREA 85	11.70	AREA 85	1.75
AREA 86	11.70	AREA 86	1.75
AREA 87	11.70	AREA 87	1.75
AREA 88	11.70	AREA 88	1.75
AREA 89	11.70	AREA 89	1.75
AREA 90	11.70	AREA 90	1.75
AREA 91	11.70	AREA 91	1.75
AREA 92	11.70	AREA 92	1.75
AREA 93	11.70	AREA 93	1.75
AREA 94	11.70	AREA 94	1.75
AREA 95	11.70	AREA 95	1.75
AREA 96	11.70	AREA 96	1.75
AREA 97	11.70	AREA 97	1.75
AREA 98	11.70	AREA 98	1.75
AREA 99	11.70	AREA 99	1.75
AREA 100	11.70	AREA 100	1.75

HIGHWAY CONSTRUCTION:

BRICKLAYERS

CARPENTERS

CEMENT MAJORS

ELECTRICIANS

IRONWORKERS

LABORERS

PAINTERS

ROOFERS

WELDERS

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LABORERS:		Prime Benefits	
Group	Rate	Group	Rate
AREA 1:			
Group 1	\$10.10	Group 1	\$1.15
Group 2	10.25	Group 2	1.25
Group 3	10.50	Group 3	1.25
Group 4	10.70	Group 4	1.25
AREA 2:			
Group 1	9.20	Group 1	.75
Group 2	9.30	Group 2	.75
Group 3	9.40	Group 3	.75
AREA 3:			
Group 1	10.75	Group 1	1.25
Group 2	10.90	Group 2	1.25
Group 3	11.15	Group 3	1.25
Group 4	11.35	Group 4	1.25
AREA 4:			
Group 1	14.00	Group 1	2.60
Group 2	14.15	Group 2	2.60
Group 3	14.40	Group 3	2.60
Group 4	14.70	Group 4	2.60
AREA 5:			
Group 1	11.25	Group 1	1.15
Group 2	11.40	Group 2	1.15
Group 3	11.65	Group 3	1.15
Group 4	11.85	Group 4	1.15
AREA 6:			
Group 1	13.25	Group 1	1.45
Group 2	13.40	Group 2	1.45
Group 3	13.65	Group 3	1.45
Group 4	13.95	Group 4	1.45
AREA 7:			
Group 1	8.90	Group 1	.95
Group 2	9.00	Group 2	.95
Group 3	9.25	Group 3	.95

FOOTNOTES:

- 7 Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.
- Employer contributes 5% of regular hourly rate to vacation pay credit for employees who have worked in the business more than 5 years; 6% for employees who have worked in business less than 5 years.
- 1 Paid Holiday: Labor Day
- 3% of gross earnings to SARNI
- 2 Weeks' Paid Vacation

AREA DESCRIPTIONS

- AGRESTOS WORKERS:
- AREA 1: Altkin, Beltrami, Cass, Clearwater, Crow Wing, Hubbard, Lake of the Woods, Pine, Roseau, & Wadena Cos.
- AREA 2: Becker, Clay, Kittson, Mahan, Marshall, Norman, Otter Tail, Pennington, Polk, & Red Lake Cos.
- AREA 3: Big Stone, Chisago, Cottonwood, Dodge, Douglas, Goodhue, Grant, Itasca, Lac Qui Parle, LeSueur, Lyon, McLeod, Meeker, Millie Lacs, Morrison, Nicollet, Pope, Redwood, Renneville, Rice, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Wright & Yellow Medicine Cos.
- AREA 4: Jackson, Lincoln, Murray & Nobles Cos.

BRICKLAYERS & STONEMASONS:

- AREA 1: Altkin (E & W) & Pine Cos.
- AREA 2: Altkin (W & E), Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Hubbard, Kittson, Lake of the Woods, Mahan, Marshall, Millie Lacs (N. of an E-W extension of the northern border of Itasca Co.), Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau & Wadena Cos.
- AREA 3: Big Stone, Lac Qui Parle, Lincoln, Lyon, Redwood, Renneville & Yellow Medicine Cos.
- AREA 4: Chisago, Itasca, Millie Lacs (S. of an E-W extension of the northern border of Itasca Co.), & Wright Cos.
- AREA 5: Cottonwood, Jackson, Murray & Nobles Cos.
- AREA 6: Dodge & Wabasha (S. of a line running E & W on Hwy #147) Cos.
- AREA 7: Douglas, Grant, Morrison, Todd, Traverse & Wilkin Cos.
- AREA 8: Goodhue (E. part, incl. Bellefleur, Frontenac, Goodhue, Harrisburg Creek, Pine Island, Red Wing, Wadena, Whitlock & Wabasha (N. of a line running E & W on Hwy #147) Cos.
- AREA 9: Goodhue (W. part, excl. Bellefleur, Frontenac, Goodhue, Harrisburg Creek, Pine Island, Red Wing, Wadena, Whitlock & Wabasha (N. of a line running E & W on Hwy #147) Cos.
- AREA 10: LeSueur, Nicollet & Sibley Cos.
- AREA 11: McLeod, Meeker & Swift Cos.
- AREA 12: Pope & Stevens Cos.
- AREA 13: Steele (S & N) & Wadena Cos.
- AREA 14: Wadena Cos.
- CARPENTERS, MILLWRIGHTS, PILEDRIVERS, & SOFT FLOOR LAYERS:
- AREA 1: Altkin (Jacobson) Cos.
- AREA 2: Altkin (N & E) & Cass (NE Section) Cos.
- AREA 3: Altkin (S & W), Cass (E, incl. NE & NW portions), Crow Wing, Hubbard (Excl. cities of Reddie, Guthrie, Lake George, Laporte, Mary & Nobles), Millie Lacs (N. part, incl. cities of Otter Tail & Wadena), Todd (N & S), & Wadena Cos.
- AREA 4: Becker, Clay (except Moorhead), Otter Tail, & Wilkin Cos.
- AREA 5: Beltrami, Cass (NW portion), Clearwater, & Hubbard (N. part, incl. cities of Reddie, Guthrie, Lake George, Laporte, Mary & Nobles) Cos.
- AREA 6: Big Stone (N & S), Douglas, Grant, Pope, Stevens, & Traverse Cos.
- AREA 7: Big Stone (S & N), Lac Qui Parle, McLeod (N. part), Meeker, Renneville (N & S), Swift & Yellow Medicine Cos.
- AREA 8: Chisago, Itasca, McLeod (E. part), Millie Lacs (SE part, incl. cities of Rock, Long Siding, & Princeton), Pine (S. part, incl. cities of Bertram, Brook Park, Hammette, Pine City, Rock Creek & W. Rock), Sibley (NE edge), & Wright (Excl. NW part) Cos.
- AREA 9: Chisago & Itasca Cos.
- AREA 10: Clay (City of Moorhead & a radius of 5 miles NE & S of the city limits) Cos.
- AREA 11: Cottonwood, Jackson, Lincoln, Lyon, McLeod (S. tip), Murray, Nicollet (W. part, incl. cities of Cottonwood, Klossner & Lafayette), Nobles, Redwood, Renneville (S & S), & Sibley (W 2/3) Cos.
- AREA 12: Dodge (NE part, incl. cities of Burns, Concord, Dodge Center, Kasson, & Monticello), Goodhue (city of Pine Island) & Wabasha (Excl. NW part & cities of Ballou, Wadena & Weaver) Cos.
- AREA 13: Dodge (NW part, incl. cities of Clearmont & W. Concord), Goodhue (cities of Dennison, Kenyon, Skyberg, Soga, Stanton, & Wange), LeSueur (E. part, incl. cities of Elroy, Elmore, Lexington, Montgomery, New Prague, St. Thomas, & Waterville), Rice, Steele (N. part, excl. Blooming Prairie & Ellendale) & Wadena (excl. Smith Hill, Watson & New Richmond) Cos.
- AREA 14: Dodge (S. portion, includes cities of Mayfield & Olio), & Steele (SE tip, incl. Blooming Prairie) Cos.
- AREA 15: Goodhue (Excl. city of Pine Island & Dennison, Kenyon, Skyberg, Soga, Stanton & Wange) & Wabasha (NW part, incl. Lake City, Wabasha, Wadena & Cannon Falls) Cos.
- AREA 16: Kittson, Mahan, Marshall, Norman, Pennington, Polk (Excl. E. Grand Forks & an area 5 miles outside city limits), Red Lake & Roseau Cos.
- AREA 17: Lake of the Woods Cos.

AREA DESCRIPTIONS (CONT'D)

CARPENTERS, MILLWRIGHTS, FLEETWRIGHTS, & SOFT FLOOR LAYERS (CONT'D):

- AREA 18: LeSueur (W. part, incl. cities of Cleveland, Kasota, LeCenter, LeSueur & Ottumwa), Nicollet (E. part, incl. cities of New Sweden, Nicollet, Norwalk, N. Mankato, & St. Peter), Sibley (SE Tip), Vasaca (NW Tip, incl. Smiths Mill) Cos.
- AREA 19: Little Lake (SW part, incl. cities of Fortston, Milaca, & Pease) & Wright (NW part) Cos.
- AREA 20: Little Lake (Central part, incl. cities of Cove, Isle, Oumia, & Washon), Morrison, & Todd (S 1/2) Cos.
- AREA 21: Pine (N. part, excl. cities of Barron, Brook Park, Henriette, Pine City, Rock Creek, & W. Rock) Cos.
- AREA 22: Polk (E. Grand Forks & an area 5 miles outside city limits) Co.
- AREA 23: Steele (SW Tip, incl. Ellendale) & Vasaca (S. part, incl. Mankato & New Richmond) Cos.
- AREA 24: Vabasha (Kellars, Kilmara & Weaver) & Winona Cos.
- AREA 25: All aforementioned areas, except 17, 19 & 21

CURRENT MAJORS: PLASTERERS:

- AREA 1: Atkin (E 1/2) & Pine (N 2/3, incl. Sandstone & Hinckley) Cos.
- AREA 2: Atkin & Pine (S 1/2) Cos.
- AREA 3: Atkin (N 1/2), Becker, Beltrami, Cass, Clay, Crow Wing, Hubbard, Otter Tail & Wadena Cos.
- AREA 4: Big Stone, Lac Qui Parle, Lincoln, Lyon, Redwood, Bemidji & Yellow Medicine Cos.
- AREA 5: Chicago, Isanti, McLeod, Little Lake, Pine (S. of the Northern boundaries of Dell Grove, Sandstone & Decatur Twp.), Sibley & Wright Cos.
- AREA 6: Chicago & Pine (S 1/2) Cos.
- AREA 7: Clearwater, Kittson, Lake of the Woods, Mahanomen, Marshall, Norman, Pennington, Polk, Red Lake, & Roseau Cos.
- AREA 8: Cottonwood, Jackson, Murray & Nobles Cos.
- AREA 9: Dodge (E. of a line running N & S of Dodge Center) Co.
- AREA 10: Dodge (W. of a line running S & S of Dodge Center), LeSueur (E 1/2), Rice, Steele, & Vasaca (E 2/3) Cos.
- AREA 11: Douglas, Grant, Morrison, Todd, Traverse, & Wilkin Cos.
- AREA 12: Goodhue & Vabasha (N. of a line running E & W on Hwy #247) Cos.
- AREA 13: Isanti, Little Lake, Sibley & Wright Cos.
- AREA 14: LeSueur (N 1/2), Nicollet & Vasaca (W 1/3) Cos.
- AREA 15: Meeker & Swift Cos.
- AREA 16: Pope & Stevens Cos.
- AREA 17: Vabasha (E. to Junction of Wm. Hwy #40, then E. to Mississippi River) & Winona Cos.

ELECTRICIANS:

- AREA 1: Atkin, Cass (S 2/3), Crow Wing, Hubbard (S 1/2, excl. Bucida, Guthrie, Lake George, Laporte, Mary & Rosby), Little Lake (N. part, incl. cities of Cove, Isle, Oumia, Optand, Vinton & Washon), Morrison, Pine (N. part, incl. Sandstone & Hinckley Twp.), Todd & Wadena Cos.
- AREA 2: Becker, Clay, Kittson, Mahanomen, Marshall, Norman, Pennington, Polk, Red Lake, & Roseau Cos.
- AREA 3: Beltrami, Cass (N. 1/3), Clearwater, Hubbard (N. part, incl. cities of Bucida, Guthrie, Lake George, Laporte, Mary & Rosby), & Lake of the Woods Cos.
- AREA 4: Big Stone, Cottonwood, Jackson, Lac Qui Parle, LeSueur (W 1/3), Lincoln, Lyon, McLeod, Meeker, Nicollet, Pope, Redwood, Bemidji, Sibley, Stevens, Swift, Vasaca, Wright (W 2/3), & Yellow Medicine Cos.
- AREA 5: Chicago, Goodhue (N. of Belle Creek, Winona, Roseau, & Vasa Twp.), Isanti, LeSueur (E. of Cleveland, Sharon, Tyrone & Washington Twp.), Little Lake (S. of Brachy, Lewis & Oumia Twp.), Pine (S. of Arion, Barry, Clover, Hinckley & Omega Twp.) & Rice Cos.
- AREA 6: Dodge, Goodhue (E. part, incl. Cannon Falls, Red Wing, Lambrova & Pine Island), Steele & Vabasha Cos.
- AREA 7: Douglas, Grant, Otter Tail, Traverse & Wilkin Cos.
- AREA 8: Murray & Nobles Cos.
- AREA 9: Winona Co.
- AREA 10: Wright (E 1/3) Co.

AREA DESCRIPTIONS (CONT'D)

CLAIMERS:

- AREA 1: Chicago, Isanti, McLeod, Pine, Sibley & Wright Cos.
- AREA 2: Cottonwood, Jackson, Lac Qui Parle, Lincoln, Lyon, Murray, Nobles, Redwood, Steele & Yellow Medicine Cos.
- AREA 3: Dodge, Goodhue, Vabasha & Winona Cos.
- AREA 4: LeSueur, Nicollet, Rice & Vasaca Cos.

IRONWORKERS:

- AREA 1: Atkin, Becker, Beltrami, Cass, Clearwater, Crow Wing (SW portion), Dodge, Douglas, Goodhue, Grant, Kittson, Lake of the Woods, Mahanomen, Marshall, Little Lake (N. part, incl. cities of Cove, Isle, Oumia, Optand, Vinton & Washon), Norman, Otter Tail (NE part, incl. cities of Butler, Hillview, Lake & Vergus), Pennington, Pine (N. part, excl. cities of Henriette, Pine City, Rock Creek & W. Rock), Polk, Red Lake, Roseau, Vabasha, & Wadena (N. of city of Wadena) Cos.
- AREA 2: Big Stone, Chicago, Cottonwood, Crow Wing (SW portion), Dodge, Douglas, Goodhue, Grant, Isanti, Lac Qui Parle, LeSueur, Lincoln, Lyon, McLeod, Meeker, Little Lake (S. part, incl. cities of Fortston, Long Siding, Milaca, Pease & Princeton), Morrison, Nicollet, Otter Tail (E. of Bucida, cities of Butler, Hillview, Lake & Vergus), Pine (S. part, incl. cities of Bemidji, Bemidji, Rock Creek, & W. Rock), Pope, Redwood, Bemidji, Rice, Sibley, Steele, Stevens, Swift, Todd, Traverse, Vabasha, Wadena (city of Wadena & S. to county line), Vasaca, Winona, Wright & Yellow Medicine Cos.
- AREA 3: Clay & Wilkin Cos.
- AREA 4: Jackson, Murray & Nobles Cos.

LATHES & STEEL INSULATORS:

- AREA 1: Becker (E. of section), Big Stone, Chicago, Clay, Crow Wing (S 1/2), Douglas, Goodhue (excl. S 1/3), Grant, Isanti, LeSueur, McLeod, Meeker, Little Lake, Morrison, Nicollet, Otter Tail, Pine (S 1/3, excl. Hinckley), Pope, Bemidji, Rice, Sibley, Stevens, Swift, Todd, Traverse, Vabasha (N. part, incl. Lake City), Wadena (portion S. of a line drawn from Becker-Hubbard-Wadena Co. line to Cass-Todd-Wadena Co. line), Vasaca (SW section, incl. Jansenville), Wilkin & Wright Cos.

PAINTERS:

- AREA 1: Atkin, Beltrami, Cass, Clearwater, Crow Wing, Hubbard, Lake of the Woods, Morrison (N. part, excl. Little Falls), Todd & Wadena Cos.
- AREA 2: Becker, Clay, Grant, Kittson, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau & Wilkin Cos.
- AREA 3: Big Stone, Douglas, Meeker, Little Lake, Morrison (S. part, incl. Little Falls), Pope, Stevens, Swift, & Traverse Cos.
- AREA 4: Chicago & Pine (S 1/3, incl. Pine City) Cos.
- AREA 5: Cottonwood, Jackson, Lac Qui Parle, LeSueur, Lincoln, Lyon, Murray, Nicollet, Nobles, Redwood, Bemidji, Rice, Sibley, Steele, Vasaca & Yellow Medicine Cos.
- AREA 6: Dodge, Goodhue, Vabasha & Winona Cos.
- AREA 7: Isanti, McLeod & Wright Cos.
- AREA 8: Pine (S 2/3, excl. Pine City) Co.

PIPEFITTERS, FLEETWRIGHTS, & STEAMFITTERS:

- AREA 1: Atkin, Becker, Beltrami, Cass (S. 1/2), Clay (excl. city of Moorhead), Clearwater, Crow Wing, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Polk (excl. city of E. Grand Forks), Red Lake, Roseau, Traverse, Wadena & Wilkin Cos.
- AREA 2: Big Stone, Lac Qui Parle, Meeker, Morrison, Pope, Stevens, Swift, Todd & Yellow Medicine Cos.
- AREA 3: Cass (N 1/2) Co.
- AREA 4: Chicago & Goodhue (N 1/2) Cos.
- AREA 5: Clay (city of Moorhead & Polk (city of E. Grand Forks) Cos.
- AREA 6: Cottonwood, Jackson, LeSueur, Lincoln, Lyon, Murray, Nicollet, Nobles, Redwood, Bemidji & Sibley Cos.
- AREA 7: Dodge, Goodhue (S 1/2), Rice, Steele, Vabasha, Vasaca & Winona Cos.

AREA DESCRIPTIONS (CONT'D)

PIPEFITTERS; PLUMBERS; & STEAMFITTERS (CONT'D):

- AREA 8: Isanti, McLeod, Millie Lacs & Wright Cos.
 AREA 9: Pine Co.
 ROOFERS:
 AREA 1: Atkin Co.
 AREA 2: Becker, Clay, Grant, Kittson, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau, Traverse & Wilkin Cos.
 AREA 3: Beltrami, Clearwater & Lake of the Woods Cos.
 AREA 4: Cass, Douglas, Hubbard, Isanti (N. of St. Hwy #95, excl. city of Cambridge), Millie Lacs, Morrison, Pine, Pope, Stevens, Todd, Wadena & Wright (N. of Wright Co. Rd. #59, from S. Haven to Monticello, incl. both towns) Cos.
 AREA 5: Chicago, Coonabe, Isanti (S. of St. Hwy #95, incl. city of Cambridge), LeGuerre, McLeod, Nicollet, Rice, Sibley, Wabasha & Wright Cos.
 AREA 6: Crow Wing Co.
 AREA 7: Dodge, Steele, Waseca & Wiltona Cos.
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SHEET METAL WORKERS:

- AREA 1: Atkin Co.
 AREA 2: Becker, Clay, Grant, Kittson, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau, Traverse & Wilkin Cos.
 AREA 3: Beltrami, Clearwater & Lake of the Woods Cos.
 AREA 4: Cass, Douglas, Hubbard, Isanti (N. of St. Hwy #95, excl. city of Cambridge), Millie Lacs, Morrison, Pine, Pope, Stevens, Todd, Wadena & Wright (N. of Wright Co. Rd. #59, from S. Haven to Monticello, incl. both towns) Cos.
 AREA 5: Chicago, Coonabe, Isanti (S. of St. Hwy #95, incl. city of Cambridge), LeGuerre, McLeod, Nicollet, Rice, Sibley, Wabasha & Wright Cos.
 AREA 6: Crow Wing Co.
 AREA 7: Dodge, Steele, Waseca & Wiltona Cos.
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 AREA 100: Crow Wing Co.

TILE SETTERS:

- AREA 1: Dodge & Wabasha (Cities of Plainview & Elgin S. of a line E & W on Hwy #147) Cos.
 AREA 2: Remaining Counties & Remainder of Wabasha Co.

TRUCK DRIVERS:

- AREA 1: Chicago (S & W) & Wright Cos.
 AREA 2: Atkin, Cass (S. of a line drawn in an easterly direction from the NW corner of Wadena Co. to the SE corner of Crow Wing Co.), Crow Wing, Morrison, Todd & Wadena Cos.
 AREA 3: Becker, Big Stone, Clay, Otter Tail, Traverse & Wilkin Cos.
 AREA 4: Beltrami, Cass (N. of a line drawn in an easterly direction from the NW corner of Wadena Co. to the NE corner of Crow Wing Co.), Clearwater & Hubbard Cos.
 AREA 5: Chicago (S & W), Isanti & Pine Cos.
 AREA 6: Cottonwood, Jackson, Lee Qui Parle, Lincoln, Lyon, Murray, Nobles, Redwood, Steele, Wabasha, Waseca & Wiltona Cos.
 AREA 7: Dodge, Goodhue, LeGuerre, McLeod, Nicollet, Rice, Sibley, Steele, Wabasha, Waseca & Wiltona Cos.
 AREA 8: Douglas, Grant, Meeker, Pope, Stevens & Swift Cos.
 AREA 9: Kittson, Mahanomen, Marshall, Norman, Pennington, Polk, Red Lake & Roseau Cos.
 AREA 10: LeGuerre, Meeker (S & W), Sibley & Wright Cos.
 AREA 11: Millie Lacs Co.

LABORERS:

- AREA 1: Atkin, Cass (S. of a line drawn in an easterly direction from the NW corner of Wadena Co. to the SE corner of Crow Wing Co.), Crow Wing, Morrison, Todd & Wadena Cos.
 AREA 2: Becker, Big Stone, Clay, Otter Tail, Traverse & Wilkin Cos.
 AREA 3: Beltrami, Cass (N. of a line drawn in an easterly direction from the NW corner of Wadena Co. to the NE corner of Crow Wing Co.), Clearwater & Hubbard Cos.

AREA DESCRIPTIONS (CONT'D)

LABORERS (CONT'D):

- AREA 4: Chicago, Isanti, Pine & Wright Cos.
 AREA 5: Cottonwood, Jackson, Lee Qui Parle, Lincoln, Lyon, Murray, Nobles, Redwood, Steele, Wabasha, Waseca & Wiltona Cos.
 AREA 6: Dodge, Goodhue, LeGuerre, McLeod, Nicollet, Rice, Sibley, Steele, Wabasha, Waseca & Wiltona Cos.
 AREA 7: Douglas, Grant, Meeker, Pope, Stevens & Swift Cos.
 AREA 8: Kittson, Mahanomen, Marshall, Norman, Pennington, Polk, Red Lake & Roseau Cos.
 AREA 9: Lake of the Woods Co.
 AREA 10: Millie Lacs Co.

LABORERS CLASSIFICATIONS FOR AREAS 1, 3, 4, 5 & 6:

Group 1: Generally, Carpenter Tenders, Concrete Pump Operator below grade; Drill Bitmen Tenders; Dumpmen - dirt, asphalt, concrete, cement; Heater Tenders; Hot Tar Caulker - corker; Joint Banding Material Handler - all types Power Sucker; Heavy Snow Blower Operator; & Tool Crib Checker

Group 2: Chain Saw Operator; Concrete Saw, Drill Operator; Concrete Vibrator; Demolition & Trucking excluding remodeling; Mason Tenders; Mortar Mixer - cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools, Jackhammer, Paving Machine, Chipping Machine, Tamping Operator, etc.; Swing Stage Line Scaffold (not including "patent" Scaffold); & Torchman - gas, electric, thermal or similar device
 Group 3: Calson North Nozzle Operator - Gunite, Cement, Sandblasting; Pipelayer; Refractory Worker; Sheet Metal Worker & Drivers; Heavy Building Excavation; Underground Work - open ditch or excavation 5' below grade; & Underpinning
 Group 4: Bellier for slating purposes; Dynamite Blasters or substitute products Tower Tr, water, gas, gel, brislar, silent dynamite, etc.

LABORERS CLASSIFICATIONS FOR AREA 2:

Group 1: Laborers; Concrete Bucket Man
 Group 2: Power Tool Operators of tools that come under the Laborers' jurisdiction; Brick and Plaster Tenders; Mortar Mixer
 Group 3: Rod Carriers; Non-metallic Pipe Layer; Gas Line Wrapping and Taping (distribution only); Cutting Torch for Demolition

LABORERS CLASSIFICATIONS FOR AREA 7:

Group 1: Concrete Pump Operator below grade; & Power Sucker Operator
 Group 2: Air Tool Operator; Automatic Tamping Operator; Concrete Saw - Core Drill; Demolition; Laborer on Rope Scaffolding but not including Safety Scaffold; Mason Tenders; Men Handling Gunite 3 hours or more per day; Mixers of Mortar, Cement, or any other substitute materials or compositions; Operator of Concrete Vibrator; Torchmen Demolition; & Underground Work, including Sheet Metal Workers, Tunnel Work, House Moving & Underpinning work, Calson Work, Cofferdam Work, Tunnel Work, House Moving & Underpinning work, including Sheet Metal Workers & Drivers of Heavy Building Excavation (all work 8 ft. or more below the adjoining ground where the excavation is not more than 8 ft. wide (Not Applicable to Air Pressure Work))
 Group 3: Nozzlemen

LABORERS CLASSIFICATIONS FOR AREA 8:

Group 1: Laborers; Concrete Bucket Man

Group 2: All power tools (air, gas, and electric); Operators of tools that come under the Laborers' jurisdiction; Brick, Plaster and Finish Tenders; Sandblaster and Gunite Pot Tenders; Hose Tender where under the Laborers' jurisdiction

Group 3: Rod Carriers; Non-metallic Pipelayers; Gas Line Wrapping or Taping; Sand Blaster and Gunite Nozzlemen where under Laborers' jurisdiction; Cutting Torch for demolition

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (CONT'D):
CLASS 7 - Concrete Batch Plant Operator; Fireman, First Class
 license; Cement Operator; Tractor Operator D-2 or similar size;
 Front End Loader Operator, up to 1 cu. yd.
CLASS 8 - Air Compressor Operator, 450 CFM or over, Pump and/or
 Conveyor Operator; Fireman, Temporary Heat; Brakeman; Pick-up
 Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler;
 Welding Machine Operator
CLASS 9 - Mechanical Space Heater (temporary heat); Oiler or
 Greaser; Elevator Operator

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 (19 CFR, 3.5 (a) (1) (ii)).

LABORERS CLASSIFICATIONS FOR AREA 9:
 Group 1: Common Concrete Shovelers; Pump Proofer below grade; Steel Joist
 Mender; Scaffolding & Gas Heater Tenders; Snow Blower Operator; Tamping &
 Reinforced Steel

Group 2: Carpenter Tenders; Bricklayer Tenders; Stone Mason Tenders;
 Jackhammer Operator; Pavement Breaker Operator; Cement Handler (bulk or bag);
 Cement, Mortar or any other substitute or composition mixer - mixer, one bag;
 Concrete Vibrator Operator; Concrete Pedestal Hand Cement mixer; Hand Frame or
 Pneumatic Concrete & Power Operated Tamping Operator; Chipping Hammer Operator;
 Power Baggy Operator; Kettlemaster; Pump Operator 1" & Under; & Torchless Demolition
 Group 3: Cement Gun Operator; Huskiness; Concrete Saw - Core Drill; Cement
 Machine Operator; & Underground work which is 8 ft. or more below the adjoining
 ground where the excavation is not more than 8 ft. wide
 Group 4: Pipe Handler (water, gas, cast iron & non-metallic)
 Group 5: Pipe Layer - non-metallic
 Group 6: Power Chain Saw Operator

LABORERS CLASSIFICATIONS FOR AREA 10:

Group 1: General; Demolition & Wrecking; Torchless Demolition; Hot Tar
 Caulk and Cooker; Concrete Joint Saw Op.; & Pump Proofer below grade
 Group 2: Concrete Core Drill; & Power Buggy Operator
 Group 3: Miner Tenders; Dumping; Chipping Hammer Operator; Concrete Vibrator
 Operator; Miner of Mortar, Cement or any substitute materials or compositions;
 Automatic Tamping Operator; Laborers on Rope Swing Scaffold, but not incl.
 Safety Scaffold; Cement Handler (dry sack or bulk, over two hours per day);
 Plaster Tenders; Block Tender Handling 12" concrete blocks or larger; Cement
 Machine Operator

Group 4: Jackhammer Man
 Group 5: Underground Work, Calson Work, Cofferdam Work, Tunnel Work, House
 Moving & Underpinning Work, including Sheet Piers & Drivers on Heavy Building
 Excavation. Eight ft. or more below the adjoining ground where the excavation
 is not more than 8 ft. wide (Not Applicable to Air Pressure Work)

Group 6: Dynamite Man & Pipe Layers

Group 7: Huskiness

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

CLASS 1 - Helicopter Operator; Truck & Crawler Cranes with 300'
 of Boom and over, including jib; Tower Crane 300' & over
CLASS 2 - Truck & Crawler Crane w/200' of Boom, up to and not
 including 300' of Boom, including jib; Tower Crane 250' & over
CLASS 3 - Truck & Crawler Cranes with 150' of Boom, up to and
 not including 200' of Boom, including jib; Tower Crane 200' &
 over

CLASS 4 - Traveling Tower Crane; Master Mechanic; Pile Driving
 Operator; Tower Crane 150' & over
CLASS 5 - Truck & Crawler Cranes up to & not including 150' of
 Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer
 (3 drums or more); Locomotive Operator; Overhead Crane Operator
 (Inside Building Perimeter); Tower Cranes - Stationary 100' &
 over; Tractor Operator with boom; All Terrain Vehicle Cranes;
 Fireman, Chief License.

CLASS 6 - Air Compressor Operator, 450 CFM or over, Pump Operator
 and/or Conveyor Operator (2 or more machines); Hoist Engineer
 (2 drums); Mechanic or Welder; Pumpcrete or Compaco-type Machine
 Operator; Forklift; Boom Truck Operator; Concrete Mixer Op.;
 Drill Rigs - Heavy Rotary or Churn when used for caisson drilling
 for Elevator Cylinder or Building Construction; Front End Loader
 Operator; Hoist Engineer (one drum); Straddle Carrier Operator;
 Power Plant Engineer (100 KW and over on multiples equal to 100
 KW and over); Tractor Operator over 22; Well Point Pump Operator

Basic Monthly Rates	Fringe Benefits
111.70	18.15+a
111.70	18.15+a
112.57	18.15+a
111.70	18.15+a
112.57	18.15+a
111.70	18.15+a
111.70	18.15+a
106.93	18.15+a
8.11	2.105+b

POWER EQUIPMENT OPERATORS:

References:

a. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day plus Election Day, provided the employee works the schedule work day before and after the holiday.

b. Paid Holidays: New Year's Days
Memorial Day; Independence Day;
Labor Day; Thanksgiving Day
and Christmas Day provided the
employee has worked the schedule
work days preceding and follow-
ing the holiday.

Basic Hourly Rates	Pringe Benefits
\$17.41	2.694 ^c
17.19	2.694 ^c
8.705	
14.95	5.26
19.03	3.91
16.92	2.43 ³
12.228	2.545
12.435	2.545
12.535	2.545
11.435	2.545
11.585	2.545
11.685	2.545
11.40	2.05
10.95	1.43
10.25	2.10
13.00	1.84
12.95	3.11 ²
6.69	2.75

PRECISION NO. 1182-3015

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(47 PB 24526 - June 4, 1982)
State of Delaware

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Elevator Contractors:

Mechanics

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11/11/2017 10:47:37 AM

Elevator Constructors

Melpers (Prob.)

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6. *Waterfowl, Mammals*

4. Machinery Inventory

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

Kent & New Castle Cos.

4. State the reasons

0-87696-472-7 \$12.95

TRUCK DRIVERS:

BUILDING CONSTRUCTION

Group	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	

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HEAVY CONSTRUCTION

Group 1

Group 2

Group 1

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REGULAY CONSTRUCTION,

ORIGINALY ISSUED IN 1775

Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yuba, and Yuba Counties, California

	Basic Hourly Rate	Comp Benefits
General: Cement Masons Carpenters Siding or slip form Scaffolds or Masons	15.52	5.23
	15.77	5.93

DEPOSITION NO. C-02-016 - Vol. 49

(4) 18 38022 - August 27, 1982)

Alameda, Asador, Calaveras, Contra Costa, Del Norte, El Dorado,

Category	1950	1951	1952	1953
General	15.1	15.1	15.1	15.1
Construction	15.1	15.1	15.1	15.1
Manufacturing	15.1	15.1	15.1	15.1
Wholesale & Retail Trade	15.1	15.1	15.1	15.1
Transportation	15.1	15.1	15.1	15.1
Finance, Insurance, & Real Estate	15.1	15.1	15.1	15.1
Government	15.1	15.1	15.1	15.1
Education	15.1	15.1	15.1	15.1
Health	15.1	15.1	15.1	15.1
Arts, Entertainment, & Recreation	15.1	15.1	15.1	15.1
Food & Beverage	15.1	15.1	15.1	15.1
Accommodation	15.1	15.1	15.1	15.1
Other	15.1	15.1	15.1	15.1

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15404 - 40757

Change:	
Labors:	
Prings Benefits ONLY	\$2.50

Modification Page 5

DECISION #1482-4021-MOD.89 (47 FR 19877 - 5/1/82) Bossier & Caddo Par., Louisiana	DECISION #1483-4019-MOD.82 (Cont'd) Other Electricians: Electricians	Basic Hourly Rate	Range Benefits	Basic Hourly Rate	Range Benefits	DECISION #1482-4053-MOD.810 (47 FR 50431 - 11/5/82) Statewide, Louisiana	DECISION #1482-4053-MOD.810 (Cont'd)	Basic Hourly Rate	Range Benefits	Basic Hourly Rate	Range Benefits
Plumbers & Pipefitters Sprinkler fitters	Cable Splicers	15.19	3.09	18.70	2.50+	Asbestos Workers: Zone 1	Zone 6: Group 1	10.89	1.08	10.89	1.08
15.07	2.83	19.20	2.50+	19.20	2.50+	Bricklayers & Stone- masons: Zone 1	Group 2	10.99	1.08	10.99	1.08
DECISION #1483-4001-MOD.84 (48 FR 928 - 1/7/83) Jefferson, Orleans, Bos- sier, Caddo, Calcasieu, Beauregard, Cameron, Jefferson Davis, Allen, Plaquemine, St. Bernard & St. Charles Par., Louisiana	Glassers	15.25	2.50+	15.25	2.50+	Zone 2	Group 3	11.14	1.08	11.14	1.08
	Ironworkers	15.46	2.50+	15.46	2.50+	Zone 3	Group 4	11.05	1.08	11.05	1.08
	Labors	15.29	1.75	15.29	1.75	Zone 4	Group 5	11.15	1.08	11.15	1.08
	Marble & Terrazzo Workers	16.10	2.32	16.10	2.32	Zone 5	Group 6	10.37	1.08	10.37	1.08
	Plasterers	16.37	2.00	16.37	2.00	Zone 6	Group 7	10.72	1.08	10.72	1.08
	Plumbers & Pipefitters	18.98	2.00	18.98	2.00	Labors: Zone 1	Group 1	10.77	1.08	10.77	1.08
	Roofers	15.70	.20	15.70	.20	Zone 2	Group 2	14.78	2.30	14.78	2.30
	Roofers helpers remove old roofing, hustle material & cleanup un- der supervision of journeymen	15.70	.20	15.70	.20	Zone 3	Group 3	15.50	1.56	15.50	1.56
	Sprinkler Fitters	12.30	.20	12.30	.20	Zone 4	Group 4	15.49	1.75	15.49	1.75
	Truck Drivers	15.07	2.83	15.07	2.83	Zone 5	Group 5	18.70	2.50+	18.70	2.50+
	Pickup Drivers	12.67	.70	12.67	.70	Line Construction:(Zone 3) Line men, equipment opt.	Group 6	19.20	2.50+	19.20	2.50+
	Stake Bodies, Dumps, Trailer Trucks, Winch truck & Mississippi wagon	13.52	.70	13.52	.70	Cable Splicers	Group 7	16.70	2.50+	16.70	2.50+
	Power Equipment Operators: Group 1	15.81	2.35	15.81	2.35	Groundmen	Group 1	14.53	2.04	14.53	2.04
	Group 2	11.21	2.35	11.21	2.35	Marble, tile & terrazzo workers & finishers: Zone 1:	Group 2	14.65	.70	14.65	.70
	Group 3	16.16	2.35	16.16	2.35	Marble Setters	Group 3	10.60	1.15	10.60	1.15
	Group 4	16.41	2.35	16.41	2.35	Tile & Terrazzo	Group 4	16.10	2.32	16.10	2.32
	Group 5	16.66	2.35	16.66	2.35	Workers	Group 5	10.60	1.15	10.60	1.15
	Group 6	16.91	2.35	16.91	2.35	Marble & Terrazzo Zone 6: Zone 7:	Group 6	10.60	1.15	10.60	1.15
	Group 7	17.41	2.35	17.41	2.35	Marble, tile & Terrazzo Finishers	Group 7	10.60	1.15	10.60	1.15
Plumbers & Pipefitters: Zones 1, 6, 7 & 8 Zone 2 Zones 3, 4 & 5		16.80	2.43	16.80	2.43	Painters: Zone 2: Group 1	Group 1	12.15	1.38	12.15	1.38
		15.19	3.03	15.19	3.03	Plasterers: Zone 3	Group 2	13.87	1.38	13.87	1.38
		18.98	2.00	18.98	2.00	Plumbers & Pipefitters: Zone 4	Group 3	16.37		16.37	
DECISION #1483-4019-MOD.82 (48 FR 5448 - 2/4/83) Calcasieu Par., Louisiana		18.645	2.335	18.645	2.335	Power Equipment Opera- tors: Zone 5: Group 1	Group 4	15.91	2.35	15.91	2.35
Asbestos Workers		16.10	2.32	16.10	2.32	Zone 6: Group 2	Group 5	11.21	2.35	11.21	2.35
Bricklayers & Stone- masons		15.29	1.75	15.29	1.75	Zone 7: Group 3	Group 6	16.16	2.35	16.16	2.35
Carpenters: Carpenters, Piledriver- men & Soft Floor Layers		17.83	.07	17.83	.07	Zone 8: Group 4	Group 7	16.41	2.35	16.41	2.35
Millwrights		15.47		15.47		Zone 9: Group 5	Group 8	16.66	2.35	16.66	2.35
Cement Masons		10.90	2.00+	10.90	2.00+	Zone 10: Group 6	Group 9	16.91	2.35	16.91	2.35
New & old single or multiple family re- sidence & apt. complex not to exceed 12 units 2-story walk-ups		3-5/104		3-5/104		Zone 11: Group 7	Group 10	17.41	2.35	17.41	2.35

Modification Page 6

Modification Page 8

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Change:
Ironwork
Struct
and B

Basic Policy Page	Private Residence Page
544-13	2-50

Modification Page 7

DECISION #LAB2-4053-MOCH10 (Cont'd)	Basic Hourly Rate	Private Benefits	DECISION #LAB2-4053-MOCH10 (Cont'd)	Basic Hourly Rate	Private Benefits
Zone 5:	12.66	2.35	MOO:		
Group 1	12.91	2.35	(except the installation - the installation		
Group 2	12.91	2.35	the wiring of light circuits & the		
Group 3	18.16	2.35	wiring of power circuits up to the		
Group 4	18.41	2.35	final distribution panel), operation,		
Group 5	18.91	2.35	maintenance & repair of video sound		
Group 6	18.66	2.35	or audio & associated signal equip.		
Group 7	15.41	2.35	& apparatus by means of which		
Group 8	13.18	2.35	electricity is applied in the trans-		
Group 9	11.61	2.35	mission or transference, production		
Group 10	9.45	2.35	or reproduction of video or sound		
Group 11	10.78	2.35	with or without ethereal aid includ-		
Zone 7:			ing all types of signal systems that		
Group 1	15.23	2.35	may be required		
Group 2	12.48	2.35	Jefferson, Orleans, Plaque-		
Group 3	12.68	2.35	mines, St. Bernard & St.		
Group 4	15.73	2.35	Charles Parr.		
Group 5	10.73	2.35	Footnote:		
Group 6	9.08	2.35	d - Paid Holidays-A,C,D,		
Group 7	15.48	2.35	E,G, Mardi Gras Day		
Group 8	15.73	2.35	& Christmas Eve		
Group 9	15.98	2.35			
Group 10	16.23	2.35			
Group 11	16.73	2.35			
Group 12	17.23	2.35			
Roofers:					
Group 1	15.70	.20	DECISION #LAB2-4053-MOCH10		
Roofers helpers remove			#LAB2413-April 15, 1983		
old roofing, hostile			Sanctiaco, New Mexico		
material & cleanup under					
supervision of a					
journeyman	12.30	.30	MOO:		
Roof Drivers:	15.07	2.35	SAINT VICTOR WORKERS (MOCH I)		
Group 1:			Zone I-A	\$17.17	34-2.96
Pickup Drivers			Zone I-B	20.42	34-2.96
Stake bodies, dumps,	12.87	.70	Zone I-C	20.42	34-2.96
trailer trucks, winch			Zone I-D	20.42	34-2.96
truck & Mississippi			SAINT VICTOR WORKERS (MOCH II)		
wagon	13.52	.70	Zone II-A	13.80	34-1.55
Zone 4:			Zone II-B	15.30	34-1.55
Group 1	12.68		Zone II-C	15.05	34-1.55
Group 2	12.98				
Group 3	13.13		DECISION NO. NY83-1203 -		
Group 4	13.33		MOO: .82		
Group 5	13.38		(48 FR 12647 - March 25,		
Group 6	13.48		1981)		
Group 7	13.48		OSKENDAGA, NEW YORK		
Zone 5:					
Group 1	11.39	.70			
Group 2	12.00	.70			
Group 3	12.05	.70			
Group 4	12.31	.70			
Group 5	12.31	.70			
Group 6	12.31	.70			
Group 7	12.31	.70			
Group 8	12.31	.70			
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Group 235	12.31	.70			

(1987)
 MICHIGAN, NEW YORK

Sojourners

MOISTURE SENSITIVE DECISIONS

STATE: Indiana
DECISION NO. IN33-2030
SPONSORING AGENCY No. IN30-2082 dated September 26, 1980 in 45 PR #4052
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to & including 4 stories)
COUNTRY: *See below
DATE: Date of Publication

wykatt. Jasper, Kosciesko, LaGrange, Marshall, Newton, Pulaski, & Starke

	Basic Hourly Rates	Fringe Benefits	Total Hourly Rate
ASBESTOS WORKERS:			
Area 1	\$16.85	2.15	19.00
Area 2	18.00	3.03	21.03
Area 3	17.21	2.73	19.94
Area 4	18.43	3.405	21.835
BOILERMAKERS			
Caulkers, Pipefitters & Steamfitters			
Area 1	15.72	3.37	19.09
Area 2	15.97	1.68	17.65
Area 3	17.05	3.25	20.30
CARPENTERS:			
Area 1	14.30	2.48	16.78
Carpenters & Soft Floor Layers			
Millwrights & Pile-drivers	14.55	2.48	17.03
Area 2			
Carpenters & Soft Floor Layers	13.40	.72 + 58	14.12
Millwrights & Pile-drivers	13.80	.72 + 58	14.52
Area 3			
Carpenters, Piledriver-men & Soft floor layers	17.10	3.57	20.67
Millwrights	17.23	3.57	20.80
Area 4			
Carpenters & Soft Floor Layers	14.68	2.02	16.70
Millwrights	14.43	2.02	16.45
Piledrivers	14.88	2.02	16.90
CEMENT MAJONS:			
Area 1	15.12	1.58	16.70
Area 2	16.13	2.09	18.22
Area 3	18.00	2.16	20.16
Area 4	14.68	2.03	16.71
ELECTRICIANS:			
Area 1	17.70	1.83 + 48	19.53
Area 2	17.55	14.38	31.93
Area 3	18.46	17.58	36.04
Area 4	17.55	2.24	19.79
ELEVATOR CONSTRUCTORS:			
Area 1	14.15	2.465	16.615
Area 2	17.36	2.33	19.69
Area 3		+ 48	
Area 4	16.11	2.465	18.575
IRONWORKERS:			
Area 1	15.40		15.40
Area 2	17.80		17.80
Area 3	14.79		14.79
Area 4	15.00		15.00
MARBLE SETTERS, TILE SETTERS & TESSARIO WORKERS:			
Area 1	13.75	2.72	16.47
Area 2	13.5	3.08	16.58
Area 3	17.05	3.25	20.30
Area 4	16.95	3.25	20.20
PAINTERS:			
Area 1	11.69	1.63	13.32
Brush, Moller, Taper & Paperhanger	12.75	2.07	14.82
Spray & Sandblasting	13.85	2.07	15.92
Painter, Drywall Tapers & Plinishers	11.69	1.63	13.32
Area 3			
Brush	14.35	2.27	16.62
Drywall Tapers	15.6	2.27	17.87
Paperhangers	15.10	2.27	17.37
Area 4			
Brush & Tapers	14.70	2.39	17.09
PLASTERERS:			
Area 1	14.59	2.08	16.67
Area 2	15.89	2.24	18.13
Area 3	10.87	1.96	12.83
Area 4	13.31	1.60	14.91
RUMBERS & STAKEPITERS:			
Area 1	16.48	2.72	19.20
Area 2	15.97	2.45	18.42
Area 3	18.00	3.00	21.00
ROOFERS:			
Area 1	13.92	.50	14.42
Area 2	16.91	2.40	19.31
Area 3			
Composition Slate & Tile	14.68	2.03	16.71

TRACK DRIVERS:

[illegible]

	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100								
1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

[illegible]

DECISION NO. IN83-2012

SHEET METAL WORKERS:

Area 1

Area 2

Area 3

SPRINKLER FITTERS

LABORERS:

Area 1:

Group 1

Group 2

Group 3

Group 4

Area 2:

Group 1

Group 2

Group 3

Group 4

Area 3:

Group 1

Group 2

Group 3

Group 4

Area 4:

Group 1

Group 2

Group 3

Group 4

Area 5:

Group 1

Group 2

Group 3

Group 4

Area 6:

Group 1

Group 2

Group 3

Group 4

Area 7:

Group 1

Group 2

Group 3

Group 4

Group 5

Area 8:

Group 1

Group 2

Group 3

Group 4

Group 5

Area 9:

Group 1

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Group 3

Group 4

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Area 10:

Group 1

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Area 11:

Group 1

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Area 12:

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Area 13:

Group 1

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Area 14:

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Area 15:

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Area 16:

Group 1

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Group 3

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Area 17:

Group 1

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Area 18:

Group 1

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Area 19:

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Area 20:

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Area 21:

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Area 22:

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Area 23:

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Area 24:

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Area 25:

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Area 27:

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Area 28:

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Area 30:

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Area 31:

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Area 40:

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Area 41:

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Area 42:

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Area 57:

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Area 58:

Group 1

Group 2

Group 3

Group 4

Group 5

Area 59:

Group 1

Group 2

Group 3

Group 4

Group 5

Area 60:

Group 1

Group 2

Group 3

Group 4

DECISION NO. 1883-2012

Page 5

CLASSIFICATION DEFINITIONS

LABORERS

AREAS 1 - 2 - 3

Group 1 - 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 1 and 1A; Portable Water Pumps with Discharge up to 3 inches

Group II - Waterproofing; Sealing of Creosote lumber or like treated material (ex railroad material); Asphalt Pavers and Lutens; Kettlesmen; Air Tool Op.; Pneumatic Tool Op.; Air & Electric Vibrators and Chipping Hammer Op.; Earth Compactors; Jackman & Sheetman in Ditches more than 6 feet deep; Laborers in ditches 6' deep or deeper; Assembly of Precast Pump; Tile Layers (sewer or field); Sewer Pipe Layers; Motor Driven Wheelbarrows and Concrete Puggies; Ryster Op.; Pumpcrete Assemblers; Core Drills Op.; Cement; Lime or Silica Clay Handlers; Sanding of Toxic Materials Damaging to Clothing Pneumatic Spikers; Deck Engine & Winch Op.; Water Main & Cable Ducting; Scaffolding Man or Screw Op. on Asphalt Paver; Chain Saw & Demolition Saw Op.; Concrete Conveyor Assembler

Group III - Plaster Tenders; Mason Tenders ex in area 1 1A; Mortar Mixers; Welders; Cutting Torch or Butcher; Cement Mixer Laborers; Cement Gun Operators; Scaffold Builders for Plasterers; Scaffold Builders for Mason ex Area 1 & 1A; Water Slat Mach. Op.

Group VI - Dynamite Men; Drillers - Air Track or Wagon Drilling for Explosives

AREA 4

Group 1 - Building & Construction Laborers; Scaffold Builders (other than for Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers & Cleaners; Waterboys & Toolhousemen; Roofer's Tenders; Railroad Workers; Masonry Wall Washers (interior & exterior); Cement Finisher Tenders; Carpenter Tenders; all Portable Water Pumps with discharge up to three (3) inches; Plaster Tenders

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DECISION NO. 1883-2010

AREA DESCRIPTIONS (CONT'D)

MAGGLE SETTERS, TILE SETTERS & TERRAZZO WORKERS

Area 1 - Marshall County
Area 2 - Elkhart, LaGrange & Kosciusko Counties
Area 3 - Jasper, Newton, Pulaski & Starke Counties

PAINTERS

Area 1 - LaGrange County
Area 2 - Elkhart, Kosciusko & Marshall Counties
Area 3 - Pulaski & Starke Counties
Area 4 - Jasper & Newton Counties

PLASTERERS

Area 1 - Elkhart, Kosciusko & LaGrange Counties
Area 2 - Marshall Co., & S. of Pulaski County
Area 3 - Jasper (N. 1/3), Pulaski (N. 1/2) and Starke Counties
Area 4 - Newton & Remainder of Jasper Counties

PLUMBERS

Area 1 - Elkhart, Kosciusko & LaGrange counties
Area 2 - Jasper, Marshall, Pulaski & Starke Counties
Area 3 - Newton County

ROOFERS

Area 1 - LaGrange County
Area 2 - Jasper & Newton Counties
Area 3 - Remainder of Counties

SHEET METAL WORKERS

Area 1 - LaGrange County
Area 2 - Elkhart, Kosciusko Counties
Area 3 - Remainder of Counties

LABORERS:

Area 1 - Jasper & Newton Counties
Area 2 - Starke County
Area 3 - Pulaski County
Area 4 - Remainder of Counties

POWER EQUIPMENT OPERATORS

Area 1 - Jasper, Newton, Pulaski & Starke Counties
Area 2 - Remainder of Counties

CLASSIFICATION DEFINITIONS (CONT'D)

LABORERS - AREA 4 (CONT'D)

Group II - Waterproofing; Handling of Concrete; Lumber of like treated material; (excluding railroad material); Asphalt; Mason's Materials; Ketchikan; Air Tool Operators and all Pneumatic Tool Operators; Air and Electric Vibrators and Chipping Hammer Operators; Earth Compactors; Jackmen & Shoring Working Devices deeper than six (6) feet in depth; Laborers working in ditches (6) feet in depth or deeper; Assembly of Concrete Reinforcing Bars (rebar or tie); Sheet Pile Layer (metallic or non-metallic); Motor driven wheelbarrows and Concrete Supplies; Hydrat Operators; Pump Outers; Assemblers; Core Drill Operators; Cement, Lime or Silica Clay Handlers (bulk or bag); Handling of Toxic Materials; Assigning to Clothing; Purchasing; Collecting; Deck Loggers; Mechanics; Cement; Water Pump; Chain Drilling; Machine and Motorizing; Scaffolding on Crew; Operator on Asphalt; Repair Chain and Scaffolding Saw Operators; Concrete Conveyor Assemblers.

Group III - Water Glass Machine Operator, Potash Mixer, Welder (Acetylene or Electric), Cutting Such as Pipes, Cement Workers, Cement Gun Operator, Scaffolding Builders, Iron Workers, Cement Gun Operator, Scaffolding Builders, Bricklayers, Plasterers.

Group IV - Dynamite Men; Drillers-Air Track or Wagon Drilling for explosives

POWER EQUIPMENT OPERATORS

1850

[illegible]

POWER EQUIPMENT OPERATORS - AREA 1 (CONT'D)

group 2 - Combination Beekhoe front and loader wheel line with 41 backhoe

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Group 5 - Sectors (up to and including 3/4 cu. yd.), Compressor over 210 cu. ft. and less than 500 cu. ft., Generators - over 50 KW, Seawater-Mechanical, Rollers-Mill Elevator (perm. installation), Boats, Atomic, Boat-Engine, Single Drum, Cranes, Pencil-Mill, Poles, and Electric Scaffolds, Small Refrigerated and Cooled 3 cu. yd. and less, Tractors-Bulk Type, Rolling Machines 2 through 8 cu. yd. and less, Tractors-Bulk Type.

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DECISION NO. PASI-1009

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DECISION NO. PASI-1009

POWER EQUIPMENT OPERATORS

Class 1: Auger (truck or tractor mounted), Austin Western or similar type, Austin Western or similar type up to 25 tons (25 tons or over requires an oiler), Backhoe, Backhoe (under 5/8 yd.), Batch plant (Automatic, Boom - side, cable-ways, Conveyor Belts - up to 4 floors, Conveyor Belts - over 4 units, Crane - Tower (climbing type), Derrick (all types), Derrick - Traveler, Dragline, Drill - Caisson, Electro Matic or similar, Grapple (remote control or other-wise), Helicopter, Helicopter - hoisting, operating lift (3 yards or over), Hoist - on 5 ft. track or over, Hoist on ship form job, Hoist bed (single, cage), Hoist - bed 12 cages up to 10 floors, Hoist or similar type with 360 degree swing, Hoist or similar type with 360 degree swing under 5/8 yd., Hoisting Scooper, Local or similar type, Leverman, Mix Mobile or similar type, Mixer - concrete paving, Mixer - paving (self-propelled), Multiple Borel Machines or Multi-engine, Pile Driver - Frank or similar type, Pile Driver (when assistance is required it will be an operating engineer), Placer - belt (concrete), Plant - Central Mix, Quad Nine, Shovels (all types), Shovels under 5/8 yd., Tractors - Boom mounted (all types), Tractor, Whirlers, Boat - job work (inboard or outboard), Bulldozer, Carrier Ross or similar type, Compactor - (with blade attached), Curb Builder - self-propelled, Drill - Core Drill - Well and Core (truck mounted), Engineer - maintenance (daily rated), Grader, Grader - elevating, Greaser - equipment, Lift (less than 3 yards), Hoist 2 drums in one unit, Hoist to or similar type with 180 degree swing, Tractors (all types with hydraulic backhoe attached), Cranes, Tower, Metro Chip Harvester (or similar type), Mixer - paving mixer - mortar - over 10 cu. ft. Plant - crushing and screening, Pumper, Pumper - mobile of similar type, Road Builder - Automatic, Scoop - self-powered and Tractor, Steam (single, dual), Spray Cure Machine (power driven), Spreader, Stem Jenny (or similar type), Syphos (steam or air) tractors (all types with hydraulic backhoe attached)

Class 1-A: Austin Western or similar type with jib + 25c, Austin Western or similar type 25 tons or over with jib + 25c, cranes (excluding over head cranes), Crane - placed on building structure, Hoist single cage with Chicago Boom attached + 25c, Engineer - lead, Hoist bed 12 cages over 10 floors, Cranes - 100 feet to 150 feet

Class 1-B: Cranes - 150 feet to 200 feet

Class 1-C: Cranes - 200 feet and over

POWER EQUIPMENT OPERATORS CONT'D

Class 2: Backfilling Machine, Boat - material or personnel, Compressor and air pump, Compressor and air tugger, Compressor and gunite machine (combination), Compressors and sandblasting unit (combination), Compressors (two), crane - overhead, Port lift - elevating - full or similar type generators - two Grade - sub, Jumbo - power, Layer - cable, Layer - pipe - no joint, Lift Slab Machine, Locomotive Machines - other minor machines - small (two), Mucking Machine, Mobile Tower, Pipe - bending Machine (pipeline only), Pipe - cleaning Machine, Pipe - wrapping Machine, Plant - asphalt operator, Plant - portable crushing and screening Plant - refrigeration pump - grout, Spreader-concrete, Asphalt and Stone, Wall point systems (Section 1C), Winch Truck (handling steel), Wire wrapping Machine, Stress, Drill - Dasey or similar, Drill - truck mounted and/or core drill for testing, Elevator low buildings and major remodeling of old), Hoist one drum, Paver - asphalt, Post Driver - guard rail (other than truck mounted), Post Driver - guard rail (truck mounted), Pumper or similar type (not self-propelled), Life Repairman, Trencher Machine, Welder Machines (up to and including 4)

Class 3: Boiler, Braker - pavement (self-propelled or ridden), Compactor (ridden or self-propelled), Crane - carry, Crusher - stone, Drill - well (horizontal), Drill (self-propelled and self contained), Elevator (alterations of old buildings), Finisher - broom (C.M.I. or similar type), Finishing Machine and Spreader (concrete), Forklifts (ridden or self-propelled), Form Line Machine, Minor equipment (all other), Motorman, Pipe Dream, Roller, Saw - concrete (ridden or self-propelled), Soil Stabilizer, Tractors (when used for snaking and hauling), Truck - winch, Tugger

Class 4: Blaster - water, Boring Machine, Broom - power, Compressor - 65 cu. ft. or under (regardless of power used), 12 gun painters), Conveyor - 1 story (regardless of power used), Conveyor (over 1 and up to 3 units regardless of power used), Generator (4 kw or over), Hack Machine or similar type, Heaters - up to and including four), Jack and Pump - motor hydraulic, Jenny - steam (or similar type), Ladavator, Mixer - concrete (regardless of power used), Mixer - mortar (over 10 cu. ft. regardless of power used), Mobile - track (or similar type), Mulching Machine, Pin Puller, Pulverizer, Pump - 1/4 inch discharge or less, Regulator - Ballast, Seeding Machine, Shoulder, Spray Cure Machine, Syphos - (steam or air), Tie Tamper (multiple heads), Tractor - farm (when used for landscaping), Welding machine - single (300 amp. or over), Oiler, Truck Crane

Class 5: Brake man, Deck hand, Helicopter, signalman, Oiler, Mechanic helper

Class 5-A: Oiler, Truck crane (50 tons or over & Fireman

DECISION NO. PABJ-3009

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. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
- b. Holidays: A through F, plus Friday after Thanksgiving Day.
- c. Employer agree to contribute \$137.27 per month to a Health and Welfare Fund.
- d. Employer agree to contribute \$26.00 per week to a pension fund.
- e. One week vacation after 1 years work; two weeks vacation after five years of service.

WELDER: Receive rate prescribed for craft performing operation to which 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. 83-11901 Filed 5-6-83; 8:43 am]

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federal register

Friday
May 6, 1983

Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

**National Oceanic and Atmospheric
Administration**

**Transfer of Marine Mammal Management
Authority to States**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 18, 216, and 403****Transfer of Marine Mammal Management Authority to States**

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are adopting a final rule to implement amendments to Section 109 of the Marine Mammal Protection Act (hereinafter referred to as "MMPA," or "the Act"). These regulations establish procedures for the transfer of marine mammal management authority to the states, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return to the FWS or NMFS of management authority once transferred to the states.

EFFECTIVE DATE: June 6, 1983.

ADDRESSES: Chief, Division of Wildlife Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240; or Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235

FOR FURTHER INFORMATION CONTACT: Mr. William Reffalt, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 632-2202; or Richard B. Roe, Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 (202) 634-7461.

SUPPLEMENTARY INFORMATION: On October 9, 1981, the President approved Pub. L. 97-58 amending various provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* One aspect of these amendments altered the mechanism for the transfer

of marine mammal management authority to the states under section 109 of the Act, 16 U.S.C. 1379. Under the pre-existing statutory procedures, states were required to request the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) to return management of the species. If a state sought authority to allow taking of the marine mammals under its management program, the state was required to request the FWS or NMFS to waive the moratorium on the taking of the species. This request required a formal Federal hearing before an Administrative Law Judge concerning the status of the requested species, and the permissible number of animals to be taken, as well as consideration of the state's proposed laws and regulations that would govern the taking of the species. The proposed waiver of the moratorium to allow taking of the species also required compliance with the provisions of the National Environmental Policy Act. In reviewing these procedures, Congress found that the lengthy process had resulted in a situation in which the goal of the Act—effective management to maintain healthy populations of marine mammals—was being impaired.

To remedy this problem, Congress established a simplified procedure under which a state could resume management of marine mammal species. This procedure entails a three-step process. First, the state must submit a request to the FWS or NMFS for transfer of management authority for a given species or a number of species of marine mammals. This request and its supporting documentation is reviewed by the appropriate Service to determine if the state has developed and will implement a program for the conservation and management of the species which meets certain requirements set forth in the Act. Second, if the FWS or NMFS publishes a proposed finding that the state program meets these requirements, the state must make a determination, under procedures set by the Act, of the optimum sustainable population ("OSP") of the species and the maximum allowable take of the species that is consistent with maintaining the species at OSP. Third, the state's determinations must be implemented through state laws and/or regulations and, if the range of the species extends beyond the territorial water of the state, the state and Federal governments must agree on a process for allocating the take of the species in areas under respective state and Federal jurisdictions. Once this "cooperative allocation agreement", if required, has been implemented and the OSP and

maximum allowable take determinations are final and implemented under state law, the Service will publish a final finding and rule transferring exclusive authority to manage marine mammals to the state for the area within its jurisdiction, including its territorial waters. The only exception to this assumption of exclusive jurisdiction would be for takings by non-state personnel for scientific research and public display purposes and takings by Federal officials and agents for health and welfare purposes, activities which remain under the control of the Federal government pursuant to section 109 of the Act.

On May 12, 1982 the FWS published proposed regulations to implement the statutory procedures for transfer of marine mammal management authority to the states (47 FR 20508). The NMFS also published corresponding regulations for species under its jurisdiction (47 FR 20496). After consideration of 26 letters of public comment the proposed regulations have been amended slightly to clarify further certain provisions, especially those involving the timing of state and Federal actions, and subsistence use provisions relating to the State of Alaska.

The Marine Mammal Commission recommended that FWS's final regulations implementing statutory procedures to transfer marine mammal management authority to states, and any supplementary information explaining them in the notice of final rulemaking, be identical to those published by the NMFS. This is to avoid any potential confusion resulting from different explanations by the two agencies of the already complex transfer process. The Services decided that this recommendation has merit and that these regulations should be published jointly as a final rule and later codified at 50 CFR Part 403. Former regulations governing transfer of management authority in 50 CFR Parts 18 and 216 have been deleted and replaced with references to the joint regulations now found in 50 CFR Part 403.

Although three commentators registered opposition to the idea of a transfer of management authority to states, no party questioned any major interpretations of the Act as set forth in these regulations. The Marine Mammal Commission, for example, recommended that the proposed regulations be adopted subject to minor changes. The State of Alaska and the International Association of Fish and Wildlife Agencies supported the proposed regulations as a faithful interpretation of the transfer provisions of Pub. L. 97-58.

The Department of Game, State of Washington, commented on the complexity and difficulty of the statutory requirements for a transfer of management authority, but thought that the proposed regulations were fair and comprehensive. Similar views were expressed by private individuals and organizations.

The final rule adopted herein is essentially unchanged from the proposed rules. These regulations apply to the species of marine mammals currently managed by the FWS, under the authority of the MMPA, such as the polar bear, sea otter, walrus, dugong, manatee and marine otter, and to other species of marine mammals, including seals, sea lions, porpoises and whales which are managed by the NMFS.

Public Comments

Comments on the proposed regulations were solicited from all interested parties within a 60-day comment period, May 12-July 12, 1982. Since the FWS and the NMFS published identical proposed regulations, comments received by both agencies were jointly considered. The following parties submitted written comments:

Numan Kitlutsisti
Alaska Federation of Natives
Jean McCollom
Shell Oil Company
Washington Department of Fish and Game
Umpqua Commercial Fishermen's Wives Association
Defenders of Wildlife
Friends of the Sea Otter
Alaska Department of Fish and Game
Marine Mammal Commission
Friends of Wildlife
Texas Parks and Wildlife Department
Minerals Management Service, Department of the Interior
Environmental Defense Fund with Friends of the Earth, the Humane Society of the United States, and the Society for Animal Protective Legislation
Seal Rescue Fund
Alaska Oil and Gas Association
Conoco Oil Company
Kauernak, Inc.
Harlan L. Bay, Taxidermist
Mac's Taxidermy
Animal Welfare Society, Inc. with Maine Chapter, Defenders of Wildlife, and Marine Federation of Humane Societies
John E. Rowe
H. K. Grade, Taxidermist
Denna McLeod
Save Our Salmon
International Association of Fish and Wildlife Agencies

After the comment period closed, the Assistant Administrator for Fisheries, NMFS, also received comments from an employee concerning the State of Alaska's position on the 1981 MMPA Amendments.

Copies of all comments are available for inspection at the offices of the information contact listed above.

General Comments

Many of the letters we received reflect public views on the advisability or inadvisability of transferring marine mammal management authority to states, and do not specifically address our procedural regulations. In this regard, two commentators opposed any transfer of marine mammal management authority to states because of concern for the continued conservation of these species. One commentator opposed management transfer because of possible impacts on offshore oil development activities. Several groups and individuals, primarily commercial fishing and taxidermy interests, registered approval of an early transfer of authority to states.

The MMPA of 1972, as well as the 1981 amendments, anticipated the eventual transfer of management authority from the Federal Government to the states, and provided specific procedures to accomplish this transfer. The Act provides a mechanism for the transfer, from the Federal Government to the states, of marine mammal management authority based on Federal review and approval of state management plans. State marine mammal management programs must generally be consistent with the goals and policies of the MMPA and, specifically, the maintenance of marine mammal populations at optimum sustainable population (OSP) levels. The regulations adopted today implement current statutory procedures and contain only limited discretionary provisions to this end. Neither the Act, as amended, nor these regulations allow for any relaxation of the strict OSP management standard. The Services strongly encourage states to apply for marine mammal management authority and obtain jurisdiction over their resident marine mammal populations. As recognized by Congress, marine mammal management activities will be more efficient and less costly at the state agency level.

Oil and gas development interests are concerned that a transfer of management authority to states may impede offshore development because regulations governing the taking of small numbers of marine mammals under section 101(a)(5) of the Act may vary among states and between states and the Federal Government. One commentator requested that we provide a specific mechanism for interstate coordination of marine mammal permits. In addition, these reviewers were

confused as to the possible impact of these regulations and the MMPA amendments on future Endangered Species Act (ESA) consultations.

Once management authority is transferred for a given species, the state has exclusive jurisdiction to manage marine mammals pursuant to the MMPA within the state and its territorial waters, except for takings by non-state personnel for scientific research and public display purposes or by Federal personnel for health and welfare purposes. Exceptions under MMPA section 101(a)(5) for the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in specified activities (other than commercial fisheries) within a specified geographical region within the state or its territorial waters, must be sought from the appropriate state agency, once management authority for the species has been transferred.

Once management authority has been transferred, the Federal Government will only regulate incidental takings, including those specified in sections 101(a)(2), 101(a)(4) and 101(a)(5), that occur outside state territorial waters and within the 200 mile zone described in section 3(14)(B) of the Act (Fishery Conservation Zone, or FCZ). It is possible, therefore, that because an activity takes place over a large geographical area, an individual or organization may need to apply to one or more states and the Federal Government for permission to take certain marine mammals under section 101(a)(5).

Current policies and procedures for the ESA consultations among agencies will not be affected by these regulations. Section 17 of the ESA provides that, in case of conflicts between the ESA and the MMPA, the more restrictive provision applies. Concurrent jurisdiction, rather than exclusive state authority, is provided for under the ESA. Since the consultation responsibilities of Federal agencies (under section 7) and the prohibitions (under section 9) specified in the Endangered Species Act will continue to apply for those marine mammals that are also listed as endangered or threatened under the ESA, the transfer of management authority to a given state would not affect Federal agency consultation responsibilities under the ESA. Furthermore, section 6(c) provides for state and Federal agreements for the conservation and management of endangered and threatened species. Nothing in the Act or in our regulations should be construed as affecting in any manner any cooperative agreement

entered into between a state and the Federal Government under section 6(c) of the ESA.

Several Alaska Native representatives requested a clarification of the subsistence use provisions which only apply to the State of Alaska. Some reordering of paragraphs and refinement of terms has been added to these provisions and is discussed in detail under § 403.03 below.

Many commentators questioned the submission of proposed statutes and regulations in the state management plan and suggested the word "proposed" be deleted, or that the approval of a state management plan, if based in part on proposed language, remain conditional until any proposed statutes and regulations are implemented. Specific aspects of this issue are discussed under § 403.03 below.

Section 403.01

This section describes the purpose and scope of these regulations. In response to comments the first sentence of this section has been revised to include the phrase "upon a finding by the Secretary of compliance with certain requirements," and an error in the last word of paragraph (a) has been corrected.

We have not accepted the recommendation to add a new paragraph (b)(3) which would exclude "reasonable and prudent development of resources in the state and national interest" (such as oil and gas), from activities affected by these regulations, since this is not within our authority under the MMPA. Paragraph (b) excludes the taking of marine mammals by Federal, state and local government officials in the course of their official duties. This activity is governed by 50 CFR 18.22 and 216.22, and the notification requirements of those sections remain in effect. Sections 18.22 and 216.22 relate to the taking of stranded and beached marine mammals and the taking of marine mammals for the protection of public health and welfare. The Services are in the process of revising §§ 18.22 and 216.22 to reflect the new statutory language contained in section 109(h) as requested by one commentator. These revisions will be proposed in separate Federal Register publications.

Section 403.02

This section defines certain terms used in this subpart. A new paragraph (a) has been added to read as follows. "The term 'species' includes any population stock." This provision is derived from the first sentence of section 109(a) of the Act which allows

states the option of managing their marine mammals on the basis of population stocks. For example, states may choose where appropriate to determine optimum sustainable population (OSP) and allowable take levels for individual population stocks. This was the intent of the proposed regulation as evidenced by the definition of OSP, found at § 403.02(b) (formerly (a)), which provides that OSP is a population size for a "given species or stock." Section 3(10) of the MMPA defines the terms "population stock" or "stock" to mean "a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature."

We have therefore adopted the recommendation to clarify the term "species" to reflect the provisions of sections 109(a) and 3(10) of the Act. Conversely, we are unable to adopt the recommendation of another commentator that marine mammal species should not be subdivided into population stocks for purposes of these regulations, since the Act requires that this management option be available.

Two commentators recommended changes or requested clarification of our OSP definition in paragraph (b) (formerly (a)). Congress has specifically reaffirmed that this definition accurately reflects the meaning of the term and the intent of Congress in passing the original Act. H.R. Rep. No. 97-228, 97th Cong., 1st Sess., p. 16 (1981). It is important to note that OSP is any population level within a range of population levels. The upper bound of the range is the largest supportable population level within a given ecosystem (carrying capacity). The lower bound of the range is the population level for a given species or stock that results in maximum net productivity.

This section also defines "state management program." The state management program consists of the legal framework under which the state will manage marine mammals. Components of this framework which are specifically required to be submitted in the state's request for transfer of management authority are set forth in paragraphs (b) and (c) of § 403.03 of the proposed regulations. Paragraph (d) of § 403.03 lists additional components required only in the State of Alaska's management program.

Several commentators objected to including proposed laws, regulations and policies within the definition of "state management program." The response to this comment is found below under the discussion of § 403.03. One commentator recommended that the term "statute" be substituted for the

term "law," except in those cases where the term "law" is specifically meant to include both "statutes" and "regulations." We agree with this recommendation and have made this substitution in the definition of state management program, and throughout the final rule, where appropriate.

Section 403.03

This section delineates the form and minimum requirements of a state request for transfer of management authority. Any state requesting management authority from both the FWS and NMFS may combine the request in a single document and send copies to both agencies. The request must contain two elements: (1) Certain aspects of the proposed state management program and (2) supplemental information pertaining to the state management program. The request must include the text of relevant statutes, regulations, policies and other authorities of state law, and a narrative discussion of how these authorities blend to form a framework that meets the new requirements of the Act. This narrative discussion may be in the form of a memorandum prepared by the state Attorney General, as suggested by one commentator. However, a memorandum from the Attorney General is not added as a requirement because the state should be in the best position to determine the most appropriate agency to develop the narrative discussion.

As discussed in the preamble to the proposed regulations, although the state management program is defined broadly by section 403.02, the request for transfer of management authority need not include all aspects of the state management program. The state need not provide specific laws pertaining to the manner, times or amount of take, unless specifically required by § 403.03. Thus, the state need not submit as part of its request regulations pertaining to such aspects of take as bag limits, seasons, or the minimum rifle caliber that can be used in taking the species, since they are not specifically required by the Act. However, the request must include, for example, a law that requires taking to be humane (see § 403.03(b)(2)(i)), even though this is a restriction on the manner of taking, since it is specifically required by the Act.

A. Submission of Proposed Statutes and Regulations.

Numerous commentators objected to provisions allowing the Service to approve a state management program containing proposed laws. Many of these comments were based on the

requirements of sections 109(b)(1) and 109(f)(1)(A) of the Act. Section 109(b)(1) requires the Secretary to find that the state "has developed and will implement" a program for the conservation and management of the species before transferring management authority to the state. This language parallels the requirement of section 109(f)(1)(A), applicable only in the case of Alaska, that the Secretary find that the state "has adopted and will implement" certain statutes and regulations governing subsistence uses of marine mammals before transferring management authority to the State of Alaska. Commentators expressed concern that approval of state management programs containing proposed laws would violate these provisions and that such approvals could preclude public comment on the management programs the states actually adopt. Furthermore, commentators stated that revocation, the Service's recourse in the event a proposed statute or regulation is not adopted as submitted in the request, is too time-consuming to assure effective conservation and management of marine mammal species as the Act requires.

The Services appreciate the concerns of all parties on this issue. The transfer of management authority is a lengthy process. Allowing states to submit proposed laws for approval purposes would help streamline the process. But the affected public should have an opportunity to comment on all aspects of the state management program and should be assured that the program the state implements is the same as the program the public reviews and the Service approves.

To accommodate these concerns, the Services retained the provisions allowing states to submit management programs based on proposed laws or policies and amended the approval and transfer provisions in § 403.03. The new provisions incorporate informal rulemaking procedures for reviewing state management programs and transferring management authority to the states. New § 403.03(f) requires the Service, promptly after receiving a state's request, to make an initial determination on whether the state has developed and will implement a marine mammal management program that meets the requirements of the Act and the regulations. The Service must publish a general notice of its initial determination in the Federal Register together with, in the case of a positive determination, a proposed rule to transfer management authority to the

State. The general notice will provide the public with an opportunity to comment (60 days) and to request an informal public hearing on both the Service's initial determination and on the state management program.

After considering comments and all other relevant information, the Service will publish in the Federal Register its final determination on whether the state's program meets the requirements of the Act and regulations. Along with a positive determination, the Service will publish a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(a) The state's determinations under § 403.04 are implemented under state law;

(b) Any cooperative allocation agreement required under § 403.05(a) is implemented; and

(c) The state has adopted laws and policies that are substantially the same as those submitted in proposed form in the state's management program.

This process will allow the Services to decide initially to transfer management authority to a state based on a management program containing proposed laws and policies but requires those laws and policies to be adopted before management authority ultimately is transferred to the state. The Service's initial determination to transfer management will give the state reasonable assurance that its management program, including the laws and policies it intends to enact, meets the requirements of the Act and these regulations. The state can then adopt the laws and policies submitted in proposed form, conduct its hearings and make its determinations under § 403.04, and develop and implement any cooperative allocation agreement required under § 403.05(a).

This process also assures the public that the management program the state ultimately adopts will be substantially the same as the program on which the public had an opportunity to comment. If, after issuing proposed rules to transfer management authority to the state, the Service finds that the state has failed to adopt laws and policies substantially the same as those submitted in proposed form in the state's management program (e.g., the laws and policies adopted fail to accord the same approximate level of protection to the species, or otherwise merit resubmission of the state management program for public review and comment under § 403.03), the Service will not issue final regulations transferring management authority to

the state. In that case, the state's recourse is to adopt laws and policies substantially the same as those submitted in proposed form in its management program. Alternatively, the state could submit a new or revised management program which the Service would consider pursuant to § 403.03(f).

B. Other Provisions.

Paragraph (b) of § 403.03 lists those components of the state management program which must be submitted in the request for a transfer of management authority. In the case of Alaska, paragraph (d) lists additional mandatory components relating to subsistence uses of marine mammals. These requirements are the minimum necessary to enable the appropriate Service to make the determinations required by section 109(b)(1) of the Act.

Section 403.03(b)(1) requires the state to list the scientific and common names and estimated range of the species of marine mammals for which it seeks management authority. A state may request the transfer of management for more than one species. If this is the case, those components of the state management program that apply to more than one species do not need to be repeated for each species. Rather, the state should list the species and the components of the state management program that apply to some or all of the species. Those components of the state management program that apply to individual species should be so designated. The state should discuss which components apply generally to all species and which apply specifically to individual species in the narrative discussion required by § 403.03(a)(2).

Several commentators objected to the use of the word "provisions" to describe what aspects of the state management program must be submitted in the request for management authority. See, e.g., § 403.03(b)(2). By use of the word "provisions" it was intended that some form of state law such as statutes or regulations provide for the applicable requirements. The regulations are amended by use of the phrase "provisions of state law" where appropriate to clarify this intention.

The basic premise of section 109 of the Act and these regulations is that a state to which management authority has been transferred for a given species is to regulate the taking of that species so as to prevent its population from declining below its OSP. However, the Act provides that in the case of Alaska, subsistence taking may be allowed even if the species is below its OSP, as long as the amount of subsistence take will nevertheless permit the species to

increase toward its OSP. Paragraph (b)(2)(iii) of this section reflects this distinction.

The State of Alaska requested confirmation of its interpretation of paragraph (b)(2)(ii)(A) concerning the transfer of management authority for a species that is below OSP. Alaska believes that section 109(b)(1) (C) and (D) of the Act contemplates transfer of management authority in this case as long as taking is not permitted, or in the case of subsistence take in Alaska, as long as the subsistence take determination does not preclude a species from "eventually attaining OSP." However, Alaska's interpretation is not entirely consistent with the MMPA. In fact, section 109(b)(1)(D) of the Act states that Alaska may not permit subsistence taking of a number of animals that "would be inconsistent with the maintenance of the species at its OSP." As indicated above, we interpret this language to mean that taking is permitted as long as the amount of subsistence take will nevertheless permit the species to increase toward its OSP. Taking of a species below its OSP for subsistence purposes may not be permitted at a level that will prevent the species from increasing in numbers. See H.R. Rep. No. 97-288, 97th Cong., 1st Sess., p. 23 (1981).

One commentator was confused over the regulation of take of marine mammals for scientific research or public display purposes. Section 403.03(b)(2)(iv) of the regulations as proposed and adopted requires the state not to permit take for scientific research and public display purposes with two exceptions: (1) Take for scientific research or public display purposes by or on behalf of the state; (2) take for scientific research or public display purposes pursuant to a Federal permit (see 50 CFR 18.31 and 216.31).

This scheme is explicitly required by the Act. Section 109(b)(1)(E) of the Act provides that the state may only permit take for scientific research and public display purposes when done by or on behalf of the State. Management of all other take for scientific research and public display purposes is retained by the Services even after transfer of marine mammal management authority to the state. See H.R. Rep. No. 97-228, *supra* at 23. The Services regulate this take pursuant to permits granted under 50 CFR 18.31 and 216.31. The state may not prohibit takings for scientific research or public display conducted pursuant to Federal permits. (Review of Federal permits to assure consistency with state management is provided by § 403.05(c)). (See H.R. Rep. No. 97-228,

supra.) Thus, § 403.03(b)(2)(iv) requires that the state not permit all but these two types of scientific research and public display take; it does not authorize the state to permit any scientific research and public display take other than that by or on behalf of the state.

One commentator requested a provision to ensure state review of scientific research and public display permits issued by the Federal government for species that have not been transferred to the state, so that the state may review such permits for possible interference with management plans for other species that are within its jurisdiction. The MMPA does not authorize a state to review and disapprove scientific research and public display permits regarding species for which management authority has not been transferred to that state. If management authority is transferred to a state for a given species, then the Act authorizes that state to review and approve or disapprove an application for a permit to take a live specimen of that species within the state or its territorial waters for scientific research or public display purposes. Section 104(d) of the MMPA provides public review procedures for scientific research and public display permits. The Services publish notices of receipt of an application for the take of any marine mammals for scientific research and public display purposes in the *Federal Register*. Written comments are invited from all interested parties, including the states. A hearing may also be requested on such permits. Notice of the issuance or denial of any such permits is also given in the *Federal Register* and copies of these permits are available for review at the appropriate regional Service office.

One commentator believes that paragraph (b)(2) of § 403.03 contains no requirement that the state recognize the need to establish procedures for "incidental but not intentional taking." On the contrary, paragraph (b)(2)(v) requires that the state's marine mammal management program contains provisions of state law which "regulate the incidental taking of the species in a manner consistent with section 101(a)(2), (4) and (5)." Sections 101(a)(4) and (5) provide exceptions to the MMPA moratorium for incidental but not intentional taking of small numbers of marine mammals under certain circumstances.

The commentator further requested that there be a requirement that the state recognize "the potential for unexpected takes" and also stated that "[T]he difference between unexpected/

incidental taking and capturing or killing is large, and we feel some recognition of this difference is warranted." The Act requires all "incidental taking", which includes "take(s)" as defined at 50 CFR 18.3 and 216.3 pursuant to MMPA section 101(a), to be regulated within a state either by the Federal government, or by the state if management authority for that species has been transferred. Congress made no distinction between unexpected incidental takings and capturing or killing except with respect to cooperative allocation agreements under Section 109(d). See H.R. Rep. No. 97-228, *supra* at 26.

One commentator suggested that we restrict the application of (b)(2)(v) of § 403.03 to species "within state waters" and eliminate reference to Federal regulations. This commentator believes that it is sufficient that state incidental take regulations are consistent with the Act and that any further Federal regulation would impose undue burdens on the state. The Services agree with this comment and delete the reference to Federal regulations in paragraph (b)(2)(v).

The Minerals Management Service (MMS) of the Department of the Interior commented that the effect of paragraph (b)(2)(v) could be that an oil, gas, geophysical survey or Outer Continental Shelf (OCS) development company may need to obtain permission to take marine mammals from one or more states for animals and individual activities in waters under state jurisdiction, as well as from the Federal agencies for animals and activities in areas seaward of state territorial waters. MMS believes that this situation could cause time delays and greatly escalate costs to both industry and the Federal government. MMS stated that these potential delays are inconsistent with the OCS Lands Act, as amended, and Administration policy regarding our nation's energy resources. MMS recommended, therefore, that reference to section 101(a)(5) be eliminated from § 403.03(b)(2)(v) and that authority to authorize incidental taking under section 101(a)(5) of the Act be retained by the Federal agencies.

Section 109(b)(3)(B) of the Act provides that following transfer of management authority for a given species, the Services retain authority to regulate only that incidental taking, provided for under section 101(a)(2), (4) and (5), which occurs within the 200-mile Fishery Conservation Zone (FCZ) described in section 3(14)(B) of the Act. Congress found that where management authority had been transferred to the state, and when the required

determinations and agreements have been made, the state will have exclusive authority to manage marine mammals within the state, including its territorial waters, except for the scientific research, public display, and health and welfare takings described earlier. Section 109(b)(3)(B) is intended to make this explicit. See H.R. Rep. No. 97-228, *supra* at 24. The Act, therefore, precludes adoption of the MMS suggestion in these regulations.

Paragraph (b)(3) of this section requires that the state program contain procedures for acquiring and evaluating data relating to OSP and the maximum allowable take of the species. The procedure for acquiring and reviewing such information need not comply with section 403.04 procedures pertaining to determining OSP and the maximum allowable take of species. However, if the review, which should be done at least annually, discloses that OSP and maximum allowable take determinations may need to be adjusted, the state must use the procedures required by § 403.04 in making these adjustments. Two commentators recommended that the word "annually," as provided in the preamble to the proposed regulations, be inserted in paragraph (b)(3), and we have adopted this recommendation.

Paragraph (b)(6) of this section lists certain aspects of the state management program which must be considered by the appropriate Service in making a determination as to whether the state's program is consistent with the Act. The description of the organization of state offices involved in the administration and enforcement of the state management program need describe only the various responsibilities of these offices as they relate to marine mammal management and how these offices relate to one another. In the latter regard, an organizational chart would be helpful. Paragraph (b)(6)(ii) relates to permits involving marine mammals. The state should describe what types of permits apply to actions involving marine mammals, the laws under which such permits are granted, and what factors guide discretion on permit applications. The state should discuss, pursuant to paragraph (b)(6)(iii), certain aspects of judicial review such as the courts which have jurisdiction to review administrative decisions, who may challenge administrative decisions, the scope of judicial review, and the range of available remedies. The state should discuss, pursuant to paragraph (b)(6)(iv), such aspects of administrative rulemaking as notice procedures, public

comment requirements, *ex parte* rules and hearing requirements.

Although paragraphs (b)(6)(ii) through (b)(6)(iv) pertain to state laws on specific aspects of marine mammal management, copies of these laws do not need to be included with those provided pursuant to § 403.03(a)(1). A general description of the provisions, limitations and exceptions of these laws will be sufficient.

Paragraph 403.03(c) requires the state to submit in its request for the transfer of management authority certain supplementary information pertaining to the state management program. This information need only be submitted in summary form. It is believed that compiling the information in this form will not unduly burden the state, yet will provide the appropriate Service with a baseline from which to evaluate the proposed administration of marine mammal management by the state.

Two commentators requested greater specificity in the requirements of paragraphs (b)(6) and (c) of this section to provide Federal agencies and the public with more detailed information. We have carefully reviewed the text of the proposed and adopted paragraphs (b)(6) and (c) and have determined that these provisions require sufficient information to ensure that the public can have adequate notice of and information on the state management program and to support a finding of consistency with the goals and policies of the Act. Thus, we have adopted paragraphs (b)(6) and (c) as proposed.

Paragraph (d) of § 403.03 pertains to regulation of subsistence use of marine mammals in Alaska as provided by section 109(f) of the Act. Several commentators remarked that § 403.03(d) was confusing as written and much in need of clarification and reorganization. In addition, commentators remarked that section 109(f)(1) of the Act specifies the form in which Alaska's subsistence program must be submitted. That is, statute and regulations must be adopted governing certain aspects of the subsistence program; statutes or regulations must be adopted governing others. Accordingly § 403.03(d) is reorganized both to clarify the requirements of a submission by Alaska concerning subsistence use and to reflect the form of legal authorities required by the Act.

Other minor changes are made in § 403.03(d) in response to comments. For example, paragraph (d)(1)(ii) of the proposed regulations (now (d)(2)(ii)) is amended to include examples from the legislation of some types of economic opportunities, at the request of several

commentators. In addition, the proposed regulations provided, in conformance with section 109(f)(1)(B) of the Act, that nonsubsistence use can be authorized only if certain findings are made on the basis of the administrative record before the state agency. Section 403.03(d)(2)(iii) of the final regulations is added to ensure that written findings are made in support of the state agency's determinations. A new § 403.03(d)(3) is added to parallel the general requirement of § 403.03(a)(2) that the state request include a narrative discussion explaining its program in terms of the requirements of the Act. Section 403.03(d)(3) requires that the State of Alaska provide a discussion specific to the regulation of nonsubsistence consumptive uses of marine mammals and their effect on subsistence users.

Several commentators suggested the need for specific information on this issue and requested amendment of paragraph (d) to require that the State of Alaska provide this information in its request for marine mammal management authority. We disagree with the recommendation to add additional requirements to these regulations when the Act does not specifically require them. However the following are examples of the types of information the state should provide in the narrative discussion required by paragraph (d)(3): A description of: (1) The types of nonsubsistence consumptive uses which may be authorized for each species; (2) how nonsubsistence consumptive uses of a marine mammal species will be regulated to provide economic opportunities to residents of rural coastal villages of Alaska who engage in subsistence uses of the species; (3) any permit or licensing system relating to the taking of a marine mammal species for nonsubsistence uses, the licensing of marine mammal hunting guides, the designation of marine mammal guiding areas, and the assignment of such areas to marine mammal hunting guides; (4) any laws which authorize and establish the standards for granting or withholding such permits and licenses; and (5) the procedures used in granting or withholding such permits or licenses. In any event, the narrative discussion required by paragraph (d)(3) must provide the Services with a clear explanation of how the state's program satisfies the requirements of section 109(f) of the Act.

Additionally, it should be noted that § 403.03(d)(1)(iv) requires that the state submit a statute and regulations ensuring that takings for subsistence

uses are accomplished in a non-wasteful manner. For an example of the FWS's position on what constitutes takings in a "wasteful manner," see the definition of "wasteful manner" in 50 CFR 18.3.

One commentator suggested that provisions for subsistence take in Alaska apply only to Alaskan natives and their families, not all rural Alaska residents. This is contrary to the requirements of the MMPA. Section 109(f)(2) of the MMPA clearly defines the term "subsistence use" to be the "customary and traditional uses by rural Alaska residents". Although the legislative history of the Act, as cited by the Defenders of Wildlife in their comments, does speak of "Alaskan Natives," see H.R. Rep. No. 97-228, *supra* at 28, this does not limit the definition for several reasons.

First, Congress recognized that the subsistence use provisions of section 109 of the MMPA are similar to those of Title 8 of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, H.R. Rep. No. 97-228, *supra* at 28. The only difference between the two subsistence provisions is that "customary trade is not included within the purview of section 109 [of the MMPA]". Congress further stated that:

The section 109(f)(2) definition of subsistence uses is identical to the definition of the same term in section 803 of ANILCA in that it defines subsistence uses as the customary and traditional uses by rural Alaska residents for the personal and family consumption purposes set forth in section 803.

Id. Since the ANILCA subsistence provisions apply to both native and non-native rural Alaska residents, see S. Rep. No. 96-413, 96th Cong., 1st Sess., p. 233 (1979), so do the subsistence provisions of section 109 of the MMPA.

Second, marine mammal management authority could not be transferred to Alaska, the only state to which the subsistence provisions of section 109(f) of the MMPA apply, if subsistence provisions of section 109(f) were limited to Natives. Congress noted that Alaska interprets its Constitution as prohibiting any discrimination between its citizens on the basis of race, thereby precluding transfer of management authority to Alaska unless the subsistence provisions were racially neutral. See H.R. Rep. 97-228, *supra* at 12.

Thus, the subsistence provisions of section 109 of the MMPA apply to rural Alaska residents independent of race. It should be noted, however, that under section 101(b) of the MMPA, the subsistence priority when the Federal Government is exercising management authority is limited to Alaskan Natives.

Paragraph (e) of § 403.03 provides procedures for the appropriate Service's informal review of a request for transfer of management authority. The preliminary review procedures of paragraph (e) are not designed as a mechanism for piecemeal review of the state's management program. This subsection can be used either to gain guidance on an entire program before formal submission, or as a means of evaluating proposed aspects of the state management program before final enactment and submission.

As explained above, the Services incorporated informal rulemaking procedures for approving state management programs and transferring management authority to states in § 403.03 (f) through (h). One commentator suggested that a public comment period of at least 90 days be established. The Services believe that 90 days is excessive, but agree to the need for a minimum comment period to assist states and Federal agencies in planning and to assure adequate time for public involvement especially in rural areas. Accordingly, we have revised paragraph (f) to include a comment period of 60 days.

Section 403.04

This section describes procedures which the state must provide for in its management program and employ in determining the OSP of a given species and the maximum allowable number of animals that can be taken without reducing the population below OSP. These procedures are required by section 109(c) of the Act.

In response to public comments, we have made the following minor revisions to this section. The first sentence of paragraph (c) has been amended to read "The state agency with responsibility for managing the species in the event management authority is transferred to the state * * *," since at this point in the process management authority has not yet been transferred. A typographical error ("uses" should be "issues") has been corrected in paragraph (f)(5) and in paragraph (g)(1) the term "may" has been replaced by the word "shall" which does not change the intent of this paragraph. Finally, paragraph (g)(3) has been revised by the addition of the phrase "and the hearing record" at the end of this paragraph to clarify that both the hearing record and the decision document must be available for public inspection.

Several editorial changes were suggested by a number of commentators concerning the timing and specific content of documents. These suggestions have not been adopted. In our view the

requirements of section 109(c) of the Act are already rigorous and specific and need no further elaboration.

One commentator requested an addition to paragraph (b) that would require states to consider the impacts on state residents and on operations in state and national interest (i.e., oil and gas development) when making any changes in regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. Neither the Act, nor the House Report accompanying the 1981 amendments, contains any reference to a priority allocation of marine mammals for oil and gas development purposes. This commentator also requested some provision for public comment on proposed changes in these state regulations. Public notice provisions of state rulemaking procedures will provide the opportunity for public review of proposed changes in state regulations.

Paragraph (c) requires that a state make an initial determination regarding OSP and maximum allowable take. One commentator recommended that this paragraph also require the state to determine the current population size of the species or stock, its OSP and then whether or not it is within that range. Section 403.04 and the OSP definition at § 403.02 reflect Congressional intent concerning the findings the state must make in the OSP hearing, see section 109(b)(1)(C) of the Act, and therefore provide sufficient guidance to states on their responsibilities under this section.

One commentator noted that biological data may be lacking concerning certain marine mammal species, and that the appropriate Service should participate in the OSP determination rather than simply review the results of a state determination. The Services intend to make available all information on marine mammal species and any expertise needed by state agencies or the public throughout the state's OSP proceedings. The Services may also choose to submit evidence at an OSP hearing just as any other interested party. It should be emphasized however that the OSP and maximum allowable take determinations are solely the responsibility of the state and are a prerequisite to transfer of management authority for a species.

Paragraph (f) describes procedures which must be employed in the hearing itself. The hearing must be transcribed verbatim. In accordance with the Act, final determinations must be based on the best available scientific information. This information must be of sufficient quantity and quality to ensure that any

taking will be consistent with the maintenance of OSP. See *Committee for Humane Legislation v. Richardson*, 414 F. Supp. 297 (D.D.C. 1976), *aff'd*, 540 F.2d 1141 (D.C. Cir. 1976).

Interested persons must be afforded the opportunity to participate in the hearing to the extent specified in paragraph (f)(3). Other aspects of hearing procedures are left to the discretion of the presiding officer(s) in accordance with state law.

One commentator questioned the intent of Congress concerning the standing of written testimony that is not orally presented at a hearing conducted pursuant to § 403.04. Congress specifically found that a state may not rely on evidence, oral or written, which is not presented at the hearing. All written documents, therefore, must be entered into the record by a person able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained in the written material. See H.R. Rep. No. 97-228, *supra* at 25. Sections 403.04(f)(3) and 403.04(g)(1) are intended to make this explicit.

One commentator suggested that a specific time period be established for the review and final determination process described in paragraph (g). We believe that the states, because they are most familiar with resources available to them, are in the best position to determine appropriate time periods for review of the hearing record and decisions on the issues relevant in the OSP hearing.

Section 403.05

This section describes Federal and state responsibilities after transfer of management authority. Several minor changes have been made to this section including substituting the word "transferred" for the word "returned" in paragraphs (c) and (d), when referring to the process for transferring authority for marine mammal management to states. The word "returned" is reserved for that process whereby management authority is returned to the Federal Government pursuant to § 403.07. Paragraph (c) has also been revised in response to a comment by the addition of the phrase "together with the basis for such finding" in the first sentence of paragraph (c)(1). This is to clarify that the Service is to receive specific information on the reasons for a state's finding that the issuance of a permit would not be consistent with the state management program for a given species.

Several commentators asked that the Services explain the requirements for cooperative allocation agreements in

§ 403.05. The State of Alaska suggested language explaining this provision in terms of Congressional intent and providing a description of the cooperative allocation agreement and the process by which it will be developed:

Paragraph (a) describes the cooperative allocation agreement. In the case of a species whose range extends beyond the territorial water of the state, this agreement is a prerequisite to the transfer of management authority. . . . This instrument was designed by Congress to ensure that the state does not preempt all available take so as to preclude federal incidental take determinations in the FCZ, and to ensure that the Secretary does not make unjustifiable claims respecting numbers of animals purported to be needed to carry out his responsibilities under section 101 of the Act. Thus, it is anticipated that after the State has made its determination as to maximum allowable take, the [Service] will provide its judgment as to the number of animals that will be taken in the FCZ pursuant to federal incidental take determinations. The State will compare this number to its determination of maximum take and also, in the case of Alaska, to that necessary for subsistence use. Priority of allocation is given first to taking for subsistence purposes, in the case of Alaska, and secondly to incidental taking within the FCZ under the authority of section 101(a). The cooperative allocation agreement [including the procedures required by section 109(b)(1)(G) of the Act and 403.03(b)(4) of these regulations], therefore, is designed to provide [that] . . . (1) the state [does not] assert the need for a number of animals for subsistence uses which is not supported by historical experience or fact and which would preclude the occurrence within the FCZ of commercial fishing or other activities involving the incidental taking of marine mammals, or (2) the Secretary [does not] make unjustifiable claims regarding the number of marine mammals necessary for the Secretary to carry out his responsibilities pursuant to section 101(a). It is not intended that the cooperative allocation agreement be a vehicle by which the Secretary can assert that the State has provided inadequate numbers of marine mammals for subsistence uses.

The State of Washington believes that the allocation of maximum allowable take, provided for in the cooperative allocation agreement in paragraph (a), would entail a joint effort in determining OSP both in and out of state waters. It recommends that these regulations include further information on the Federal methodology and procedures to be utilized in such a joint determination.

As indicated above in the discussion of § 403.04, the scientific and technical expertise of the Services is available to states requesting assistance in developing their initial OSP determination pursuant to that section. However, it is the state, and only the state, which has the authority and

responsibility to determine OSP and maximum allowable take for species pursuant to section 109 of the Act. There are no joint Federal/state OSP determinations for species whose range extends beyond territorial waters of the state. The state's OSP and maximum allowable take determinations will apply within the FCZ pursuant to section 109(b)(3) and shall be treated within this zone as a Secretarial determination made in accordance with section 103 and as an applicable waiver of the moratorium under section 101(a). See H.R. Rep. No. 97-228, *supra* at 25.

The State of Washington, and other commentators, identified a problem which may arise concerning the management of species that migrate through the jurisdictions of two or more states. The cooperative allocation agreement described in paragraph (a) and further explained above, applies only between a state and the Federal Government. This does not preclude however the development of cooperative agreements between states on joint OSP research for the purpose of developing a data base to be used in the OSP determinations of one or more adjacent states for that species. We encourage the development of such cooperative agreements among states which may share management for a species.

One commentator requested a definition of the term "incidental take" as used in paragraph (a). Because cooperative allocation agreements concern that taking provided for under section 101(a) of the Act, the Services believe no additional definition of "incidental take" is necessary for § 403.05(a). See H.R. Rep. No. 97-228, *supra* at 26. Another commentator requested that some priority consideration in allocation be provided for non-commercial fishing incidental take under section 101(a)(5); however, no such priority was established in the 1981 Amendments for this type of take.

Paragraph (d) of section 403.05 encourages the state and the appropriate Service to cooperate, to the maximum extent practicable, in conserving the species of marine mammals. Three commentators requested clarification of this paragraph. The State and Federal cooperation in marine mammal conservation activities may include joint efforts involving marine mammals (e.g., research and enforcement) and does not preclude the state agency from entering into other agreements with its citizens or other parties for conservation purposes. The Federal role in monitoring and reviewing the implementation of state programs is explained under § 403.06 below.

Section 403.06

This section provides procedures for the monitoring and review of the state management program. Under section 109(e) of the Act, the Services have responsibility, after management authority has been transferred to the state, to monitor the state's implementation of its program. To facilitate this review process, paragraph (b) requires the state to submit an annual report on its management of the species, and paragraph (c) requires a report whenever either of the two events listed in that subsection occur.

Several minor changes have been made in this section. Paragraph (a) has been revised to include the phrase "implementation of" to emphasize that the Services must monitor and review the implementation of the state's program. In paragraphs (b) and (d) the words "transfer" or "transferred" have been substituted for the words "return" or "returned," and in paragraphs (b)(1) and (c)(1) the term "law(s)" has been substituted for the phrase "laws or regulations" as discussed earlier. In paragraph (b)(9), pertaining to "other information" that may be requested from the state, the phrase "consistent with the Act as amended" has been added to clarify that "other information" must pertain to the Act and to its requirements. Finally, in paragraph (d) we have added the phrase "and at the appropriate regional office of either Service" in response to several requests. To provide greater public access to reports submitted pursuant to this section, reports will be available for inspection at the appropriate regional offices of the Services as well as in the Washington, D.C. offices of the FWS and the NMFS.

Paragraph (b) defines the components of the annual report. Any changes in the state laws provided in the original request pursuant to § 403.03(b) and, in the case of Alaska, § 403.03(d), must be described in the annual report. The report should include a discussion of how such changes affect implementation of the management program. However, the extent of each discussion should be proportional to the importance of that change. For example, a change in rulemaking procedures (§ 403.03(b)(6)(iv)) may require less attention than a change in laws concerning the take of the species (§ 403.03(b)(2)).

Paragraph (b)(3) of § 403.06 requires the state to provide a summary of all available information relating to takings under the state management program. Two commentators suggested this provision as it relates to the State of

Alaska and takings for subsistence uses be explained. For the State of Alaska, the summary must include takings which have been authorized for subsistence purposes, takings which have been authorized for nonsubsistence consumptive uses, and a discussion of how the regulation of nonsubsistence consumptive uses has, to the maximum extent practicable, provided economic opportunities for the residents of rural coastal villages of Alaska who engage in subsistence uses of marine mammal species.

One commentator requested that paragraphs (b) and (c) require states to report all available information on the causes of marine mammal mortality. Information on marine mammal mortality must be supplied under paragraphs (b) (2), (3), (5), and (7), and under (c)(2) if the extent of mortality may warrant reconsideration of the OSP and maximum allowable take determinations.

Paragraph (c) of this section requires the state to report the occurrence of either of two specified events: a change in relevant state law that may impair the implementation of the state's program, or a significant occurrence or new information that may warrant reconsideration of the determinations made under § 403.04. These events concern either the very foundation of the state management program or the status of the species involved and, therefore, require immediate review by the appropriate Service.

The report should describe the event and how it affects marine mammal management. The extent of discussion should correspond to the magnitude of the problem for either the state management program or the species. For example, a change in regulatory procedures for acquiring and evaluating data relating to OSP (§ 403.03(b)(3)) may require less discussion than significant new information that warrants reconsideration of the state's OSP and maximum allowable take determinations for a species.

One commentator recommended that a specific timeframe for the filing of paragraph (c) reports be established. We have added a specific time period to paragraph (c) (45 days), but any significant event which may require an emergency reconsideration of a state management plan is to be communicated to the appropriate Service as soon as possible within this new 45-day period.

Several commentators objected to the wording of paragraph (c)(1) which requires the state to report any change in a relevant statute or regulation which

might impair the state's ability to implement the program. These commentators felt that the state should report all changes to relevant statutes and regulations.

The report required by paragraph (c) is distinct from the annual report and is intended to provide the opportunity for emergency review of significant events. States need not report under paragraph (c) minor changes in statutes and regulations, such as changes in time periods or minor procedural revisions. In our view, a requirement to report any minor changes would be unnecessarily burdensome on the states. Instead, states must report, under § 403.06(b)(1), on an annual basis all changes in laws submitted pursuant to § 403.03 (b) and (d). The appropriate Service must be alerted as soon as possible to changes which might impair the state's ability to implement its marine mammal management program. Although some commentators suggested that this standard was vague and did not provide assurance that significant changes would be immediately reported by the state, no change has been made in this standard. The state will be in the best position to judge immediately the effect of a change in state laws governing its program. By use of the phrase "may impair," doubtful situations must be resolved in favor of reporting the change to the Service. In addition, any change in the state management program that will qualify for immediate reporting is likely to be widely known. Concerned citizens or organizations can therefore play an important role in keeping the Services informed about changes in the state management program.

Section 403.07

This section provides procedures and standards for the Service's review of state management of a species of marine mammals and revocation of management authority. In addition, this section provides procedures for the state's voluntary return of management to the appropriate Service.

Numerous editorial and minor revisions have been made to this section in response to commentators' suggestions. Again, the word "transferred" has been substituted for the word "returned" when referring to the transfer to a state. "Returned" refers only to the return of management from a state to the Federal Government pursuant to this section. The word "implementation" has been added to paragraph (a) to clarify that implementation of the program is subject to review by the Services. Throughout this section, "approved

management program" has been substituted for the term "request for return of management authority" since the program being implemented, and therefore subject to review, is the management program that was approved. Paragraph (a)(1) has been changed to provide that after the Service has received information concerning implementation of the state management program, the determination of whether or not the state is in compliance with the Act and the regulations must be made within 30 days. In paragraph (a)(2) the phrase "and invite public comments thereon" has been inserted following the provision that notice be published in the *Federal Register*, to clarify our intent that the public have an opportunity to review the Service's decision to revoke. The phrase "or unless otherwise agreed upon" has been added to the end of paragraph (b)(1) to accommodate the possibility that a state may be able to advise the appropriate Service of its intent to return management well in advance of the effective date. In paragraph (b)(2) the words "and management" have been inserted following the word "conservation," to clarify that the implementation of all aspects of the state management program is of concern.

Paragraph (b)(2) of § 403.07 provides a mechanism for the return of marine mammal management authority to the appropriate Service should any aspect of the state management program be enjoined by court order so as to preclude effective conservation and management of the species. The State of Washington, in commenting on this provision, noted that there is no vehicle for "re-transfer" of management authority to the state should the injunction be dissolved or the matter causing the return of management to the Service otherwise be satisfactorily resolved. It is not the intent of these regulations to require resubmission of an entire state management program pursuant to § 403.03 should the events noted by the State of Washington occur. For example, if a preliminary injunction that caused management authority to be returned to the Service is dissolved, or should a final injunction be denied, the state management program for which management authority had originally been transferred would be revived and continue to apply. Likewise, if a final injunction is issued but the defect cured through, for example, state legislation, the original state management program, as amended by the curative legislation, would comply with this Part provided the new legislation cured that aspect of

the state management program which had been enjoined.

Accordingly, § 403.07(b)(2) is amended by adding a sentence providing that when management authority has been returned to the appropriate Service pursuant to § 403.07(b)(2), it may be returned to the state ("re-transferred") should, in the judgment of the Service, the cause for return be alleviated in such a way as to ensure that the state's management program provides effective conservation and management of the species. Compliance with § 403.03 procedures is not required for this type of "re-transfer."

Several aspects of this provision should be noted. It applies if the state has concluded that the injunction precludes effective conservation and management of the species under the state management program and has, therefore, voluntarily returned management under § 403.07(b)(2). It also applies if the state notifies the appropriate Service that effective conservation and management is not precluded because of the injunction, but the Service has decided otherwise and revoked management authority pursuant to § 403.07(a). In order for the state to take advantage of the "re-transfer" provision of § 403.07(b)(2), the state should notify the Service of the resolution of the matter. This notification should specify how the matter has been resolved and describe why the state believes effective conservation and management of the species under the state management program is now possible. In addition, the ability to take advantage of the "re-transfer" provision of § 403.07(b)(2) assumes that no other aspect of the state management program other than that which was the subject of the injunction has been impermissibly altered since the injunction was issued. If another aspect of the state management program has been altered, the state must report this change in the notice to the Service that the cause for the injunction has been cured. The Service will review this change in the state management program as if it was reported pursuant to § 403.06(c). After the state has provided notice to the Service that the cause for the injunction has been cured (including the description of any other changes in the state management program), the Service may "re-transfer" management authority if, in their judgment, a certain standard is met. This standard is the same as for the original transfer of management to the state as set forth in § 403.03(h). If the Service declines to "re-transfer"

pursuant to § 403.07(b)(2), the state may regain management authority only by complying with § 403.03.

One commentator requested guidance on the meaning of the term "substantial factual information" as used in paragraph (a). We are unable to be more specific in this regard. All information will be judged on a case-by-case basis. The Services retain an oversight responsibility under section 109 of the Act following transfer of management authority to a state and anyone may report any type of information to the appropriate Service concerning the implementation of a state management program. However, this procedure is not intended to provide a forum for arbitrary or unfounded statements by individuals opposed to state management per se.

One commentator noted that paragraph (a)(2) requires publication of a notice of intent to revoke management, but does not require publication of a contrary determination following receipt of any substantial factual information concerning the implementation of the state program. Since a finding that the state is in compliance with the Act and these regulations does not change the status quo, no general public notice is required. The individual or organization providing information to the Service will be informed of the decision pursuant to the Services' policy of responding to public inquiries and correspondence.

Two commentators noted that there is no provision under paragraph (a)(2) allowing the Services to impose an immediate emergency moratorium on taking within the state. There is no authority under the Act for such action by the Services.

One commentator requested that additional language be included in this section to require revocation of state management authority in the event that the state does not give adequate consideration to activities that are in the national interest, such as siting of energy facilities. No such authority exists under the Act.

Section 403.08

This section provides notification of the states to which management has been transferred. Accordingly, it will be updated from time to time when management has been transferred to a new state or for a new species.

This section has been revised to include reference to cooperative allocation agreements where they apply. The Marine Mammal Commission also requested the addition of reference to any state regulations adopted by the Services under § 403.05(b). However, we

intend to place these regulations, if and when adopted, under a separate section of this Part.

Applicability to Other Laws, Regulations and Requirements

Environmental assessments have been prepared in conjunction with these proposed regulations. They are available at the addresses noted in the preamble to this final rule. Based on the environmental assessments, the Department of the Interior and the Department of Commerce determined that the proposed rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c).

The Department of the Interior and the Department of Commerce have determined that this is not a major rule and does not require preparation of a regulatory impact analysis under Executive Order 12291.

The Departments have also determined that this rule will not have a significant economic impact on a substantial number of small entities and thus a regulatory impact analysis need not be prepared under the Regulatory Flexibility Act, 5 U.S.C. 601. (The determinations by the FWS under Executive Order 12291 and the Regulatory Flexibility Act are discussed in more detail in a Determination of Effects which has been made a part of the Administrative record.)

The information collections contained in this final regulation are not subject to Office of Management and Budget clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since there are expected to be fewer than ten respondents annually.

Primary Authors

The primary authors of this final rule are John Bardwell and W. Michael Young, Department of the Interior; and Georgia Cranmore and Gretchen Beck, Department of Commerce.

List of Subjects in 50 CFR Part 403

Administrative practice and procedure, Alaska, Intergovernmental relations, Exports, Imports, Transportation, Marine mammals, Indians, Endangered and threatened wildlife.

Regulation Promulgation

For the reasons set out in the preamble, Subpart F of Part 18, Title 50, Code of Federal Regulations and Subpart H of Part 216, Title 50, Code of Federal Regulations are removed and

replaced with the following references and new Part 403:

PART 18—[AMENDED]

Subpart F—Transfer of Management Authority to States

Regulations governing the transfer of management authority to states pursuant to Section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of the Interior are found at Part 403 of this Title.

PART 216—[AMENDED]

Subpart H—Transfer of Management Authority to States

Regulations governing the transfer of management authority to states pursuant to Section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of Commerce are found at Part 403 of this Title.

PART 403—TRANSFER OF MARINE MAMMAL MANAGEMENT AUTHORITY TO STATES

Sec.

- 403.01 Purpose and scope of regulations.
- 403.02 Definitions.
- 403.03 Review and approval of state request for management authority.
- 403.04 Determination and hearings under section 109(c) of the MMPA.
- 403.05 State and Federal responsibilities after transfer of management authority.
- 403.06 Monitoring and review of state management program.
- 403.07 Revocation and return of state management authority.
- 403.08 List of states to which management authority has been transferred.

Authority: 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

§ 403.01 Purpose and scope of regulations.

The regulations contained in this Part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this Part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this Part shall prevent: (1) The taking of a marine mammal by or on behalf of a Federal, state or local

government official, in accordance with sections 18.22 or 216.22 of this Title and section 109(h) of the Act, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§ 403.03, 403.06, and 403.07 of this Part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

§ 403.02 Definitions.

The following definitions apply to this Part:

(a) The term "species" includes any population stock.

(b) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(c) "State management program" means existing and proposed state statutes, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(d) "State regulation" means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

(e) The "Act" means the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

(f) The "Secretary" means the Secretary of the Interior or the Secretary of Commerce, depending on the species involved. Under Section 3(11) of the Act, the Secretary of Commerce has jurisdiction over members of the order Cetacea and members, other than walrus, of the order Pinnipedia; the Secretary of the Interior has jurisdiction over all other mammals. These secretarial authorities have been delegated to the National Marine Fisheries Service and the Fish and Wildlife Service, respectively.

(g) The "Service" or "Services" means the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as appropriate depending on the species involved. Any determination or finding required by this Part to be made by the "Service" must be made by the Director of the FWS or by the Assistant Administrator of the NMFS, or their delegates, as appropriate.

§ 403.03 Review and approval of State request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service ("Director") for species of marine mammals under the jurisdiction of the FWS, or to the Assistant Administrator for Fisheries of the National Marine Fisheries Service ("Assistant Administrator") for species of marine mammals under the jurisdiction of the NMFS. The request must include:

(1) Copies of existing and proposed statutes, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) (1) through (3) of this section;

(2) A narrative discussion of the statutes, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this Part; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions of state law concerning the take of marine mammals that

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Do not permit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of § 403.04 of this Part, has determined that the species is at its Optimum Sustainable Population (OSP) and determined the maximum number of animals that may be taken without reducing the species below its OSP, and,

in the case of Alaska, when a species is below OSP, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under § 403.05(a) of this Part, is implemented;

(iii) Do not permit take in excess of the maximum number of animals that may be taken as determined pursuant to § 403.04 of this Part; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d) of this section, and if the species is below OSP, any level of take allowed for subsistence use shall permit the species to increase toward OSP;

(iv) Do not permit take that is for scientific research or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under §§ 18.31 or 216.31 of this Title; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act.

(3) Provisions for annually acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if warranted on the basis of such evaluation, for requiring reevaluations of OSP and maximum allowable take determinations pursuant to § 403.04.

(4) Procedures for the resolution of differences between the state and the appropriate Service that might arise during the development of a cooperative allocation agreement pursuant to § 403.05(a) of this Part.

(5) Procedures for the submission of an annual report meeting the requirements of § 403.06(b) of this Part to the appropriate Service regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws relating to administrative rulemaking as they relate to the state management program;

(c) In addition to the aspects of the state management program required to

be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to

(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other materials and information as the Service may request or which the state may deem necessary or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following concerning subsistence use of the species:

(1) A statute and regulations concerning the take of marine mammals that ensure that

(i) The taking of marine mammals species for subsistence uses will be the priority consumptive uses of the species;

(ii) If restrictions on subsistence uses of the species are required, such restrictions shall be based upon the customary and direct dependence upon the species as the mainstay of livelihood, local residency, and the availability of alternative resources; and

(iii) The taking of marine mammal species for subsistence uses is accomplished in a non-wasteful manner;

(2) Statutes or regulations that ensure that the appropriate state agency will

(i) Authorize nonsubsistence consumptive uses of a marine mammal species only if such uses will have no significant adverse impact on subsistence uses of the species;

(ii) Regulate nonsubsistence consumptive uses in a manner which, to the maximum extent practicable, provides economic opportunities, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, for residents of rural coastal villages of Alaska who engage in subsistence uses of the species; and

(iii) Make written findings supporting the authorizations and regulations described in this paragraph based solely on the administrative record before the agency;

(3) A narrative discussion of the statutes or regulations required under paragraph (2) above, and any additional policies or procedures concerning the regulation of nonsubsistence consumptive uses of marine mammals. This discussion must explain how the State's program satisfies the requirements of Section 109(f) of the Act, namely that the regulation of nonsubsistence consumptive uses of marine mammals provides, to the maximum extent practicable, economic opportunities for the residents of rural coastal

villages of Alaska who engage in subsistence uses of the species.

(e) To assist states in preparing the state management program for submission, the Service will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Services. Notwithstanding preliminary review by the Service, once any proposed aspect of the state management program has been prepared and submitted in final form, it shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f)(1) After receiving the state's request, for management authority, the Service shall make an initial determination on whether the state's management program meets the requirements of the Act and these regulations.

(2) Within 45 days after receiving the state's request, unless the state and the Service agree to another time period, the Service shall publish a general notice of its initial determination in the *Federal Register* together with, in the case of a positive determination, the text of a proposed rule to transfer management authority to the state. The general notice shall contain a summary of the major components of the state's management program and shall indicate where the full text of the management program may be inspected or copied. The public shall be allowed to submit written comments and to request an informal public hearing on the Service's initial determination and the state's management program within 60 days of publication of the general notice.

(g) If requested, the Service may conduct an informal public hearing after publishing 30 days' advance notice of the date, location, and time of such hearing in the *Federal Register*.

(h) After considering all comments and other relevant information, the Service shall publish in the *Federal Register* its final determination on whether the state has developed and will implement a management program that meets the requirement of the Act and these regulations. In the case of a positive final determination, the Service shall publish with the notice a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(1) The state's determinations pursuant to § 403.04 of this Part are final and implemented under state law;

(2) Any cooperative allocation agreement required under § 403.05(a) of this Part is implemented; and,

(3) The state has enacted and submitted to the Service laws and policies that are substantially the same as those provided pursuant to § 403.03(a) in proposed form in the state's management program.

§ 403.04 Determinations and hearings under section 109(c) of the MMPA.

(a) *Introduction.* In order to gain approval of its marine mammal management program the state must provide for a process, consistent with section 109(c) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from populations it manages without reducing the species below OSP. The state process must be completed before the state may exercise any management authority over the subject marine mammals, and it must include the elements set forth below.

(b) *Basis, purpose, and scope.* The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial determination by the State.* The state agency with responsibility for managing the species in the event management authority is transferred to the state shall make initial determinations on the basis of the best scientific evidence available of: (1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and review of initial determinations and request for hearing.* The state agency shall provide notice of its initial determinations to the Service and the public and shall provide access to or copies of the documentation supporting its determinations to the Service and the public. The state agency shall indicate, in the notice of its initial determinations, the location(s) and hours during which such documentation may be inspected, and the costs, if any of copies of such documentation. The state agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations, and the state shall provide a reasonable time, not less than 30 days, for making the request, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Service and the public not less than 30 days in advance of the scheduled date(s) of the hearing(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any

documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the state agency of his desire to participate in the hearing pursuant to subparagraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses or other parties with respect to matters relevant to the state's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the issues specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the hearing record and final determinations.* (1) The state agency shall provide for either: (i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the state agency; or (ii) review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency must be made solely on the basis of the record developed at the hearing. The state agency in making its final determinations, and/or presiding officer(s) in making his (their) recommended determinations, may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The state agency shall make final determinations of the issues set forth in

paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The state agency shall advise the Service and the public of its final determinations and shall provide access to or copies of its decision document and Hearing Record.

(h) *Judicial review.* The state agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency's final determinations must be available under state law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706(2) (A) through (E).

§ 403.05 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by section 403.04 of this Part have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative allocation agreement with the Secretary has been signed and the Service has transferred management authority pursuant to § 403.03(h). The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 403.04 of this Part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which subparagraph (a) of this section applies, the state may request the Service to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Service shall adopt and enforce within such zone, such of the state's regulatory provisions as the Service considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been transferred to a state pursuant to this subpart, the Service shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be

consistent with its management program for the species:

(1) The state shall so inform the Service, together with the reasons for such finding, within 30 days of its receipt of the application, and the Service shall not issue the permit; and

(2) The Service shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been transferred to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 403.06 Monitoring and review of state management program.

(a) The Service has responsibility to monitor and review implementation of all state management programs approved pursuant to this Part.

(b) In order to facilitate such review, each state to which management authority has been transferred shall submit an annual report, not later than 120 days after the close of such state's first full fiscal or calendar year following the effective date of the Service's approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

(1) Any changes in the state laws which comprise those aspects of the state management program submitted pursuant to section 403.03(b), and, in the case of Alaska, § 403.03(d), of this Part;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species' habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of budget and staffing levels for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Service may request, consistent with the Act as amended, or which the state deems necessary or advisable to facilitate review by the Service of state management of the species.

(c) Each state having an approved management program shall file a report, in a timely manner, not to exceed 45 days from the occurrence of any of the following:

(1) Any change in a relevant state law (amendments, repealers, or new legislation or regulations or judicial precedent) as submitted pursuant to paragraphs (b)(2) through (b)(5), and in the case of Alaska, paragraph (d), of § 403.03 of this Part that may impair the State's ability to implement the program;

(2) Any significant natural or manmade occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 403.04 of this Part.

(d) All components of the state request for transfer of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, or, as appropriate, at the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235, and at the appropriate Service's regional office.

§ 403.07 Revocation and return of state management authority.

(a) *Revocation of management.* The Service shall have responsibility to review management of a species transferred to a state under this Part and to determine whether or not the implementation of the state management program continues to comply with the requirements of the Act, this Part and the state's approved management program.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this Part, or the state's approved management program, the Service shall, as soon as practicable but not later than 30 days after receipt, determine whether

or not the state continues to comply with the requirements of the Act, this Part and the state's approved management program.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Service determines that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this Part or the state's approved management program, it shall provide written notice to the state of its intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Service shall publish notice of such intent to revoke in the *Federal Register* and invite public comment thereon, and shall conduct an informal public hearing on the matter if requested by the state or if the Service otherwise determines it to be necessary. The Service shall provide to the state an opportunity for consultation between the Service and the state concerning such actions or failures and necessary remedial actions to be taken by the state.

(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Service, to bring the state management program into compliance with the provision of the Act, this Part and the state's approved management program, the Service shall revoke the transfer of management authority by written notice to the state and publication in the *Federal Register*.

(b) *Voluntary return of management authority to the Service.* (1) If a state desires to return management of a species of marine mammals to the Service, it shall provide the Service notice of intent to return management. The Service shall accept the return of management, and such return shall become effective, upon publication of a notice in the *Federal Register* to this effect no sooner than 30 days (except in an emergency as determined by the Service) nor longer than 60 days after the state has provided notice of its intent to return management or unless otherwise agreed upon.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Service of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation and management

of the species under the terms of the state management program, it shall so notify the Service and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation and management of marine mammals under the terms of the state management program, it shall so notify the Service together with the basis for the state's determination and such notice shall be treated as a report submitted pursuant to the terms of § 403.06(c)(1) of this Part. In either case, the state shall provide notice to the Service as soon as practicable but not more than 30 days after issuance of the injunction. Management authority returned to the Service pursuant to this paragraph may be re-transferred to the state, notwithstanding the requirements of § 403.03, when, in the judgment of the Service, the cause for return of management authority to the Service has been alleviated in such a way as to allow effective conservation and management of the species consistent with the requirements of the Act and this Part.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Service shall resume such management authority and provide for the conservation of the species within the state in accordance with the provisions of the Act.

§ 403.08 List of states to which management has been transferred.

The following states have received management authority pursuant to this Part for the species listed and, where appropriate, cooperative allocation agreements pursuant to § 403.05(c) are in force:

[Reserved]

Dated: March 16, 1983

G. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Dated: April 18, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 83-12127 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

Friday
May 6, 1983

Part V

Department of the Interior

Bureau of Land Management

Use Authorizations; Special Recreation
Permits, Other Than on Developed
Recreation Sites; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

Use Authorizations; Amendment of Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rulemaking would amend 43 CFR Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites, by setting forth clearly a recitation of specifically prohibited acts under the regulations and the penalties that would apply upon conviction. It would: state grounds for exemption from Special Recreation Permit requirements; authorize the Director of the Bureau of Land Management to set recreation permit fee schedules to help reimburse the United States for costs incurred in permitting recreational use of public lands; replace the requirements that an applicant for a waiver of fees submit documentation of its official recognition as an educational or scientific institution with discretion to require such documentation on the part of the authorized officer; allow commercial educational users to obtain such waivers; and state the appeals procedure.

DATE: Comments should be submitted by June 30, 1983. Comments postmarked or received after this date may not be considered in the decisionmaking process in the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C street NW., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Bruce R. Brown,

or

Robert I. Conquergood, (202) 343-9353.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would amend 43 CFR Subpart 8372 in four respects: (1) By giving the Director, Bureau of Land Management, discretion to set special recreation permit fees for the use of public lands administered by the Bureau; (2) by modifying the requirements for obtaining waivers of permit fees; (3) by clearly setting forth prohibitions relating to special recreation permits other than on

developed recreation sites, and the penalties for violating those prohibitions; and (4) by adding a section stating the circumstances when special recreation permits are not required.

Section 8372.4 is amended in the proposed rulemaking to require the Director, Bureau of Land Management, to publish a schedule of fees for special recreation permits. This fee schedule is designed to require recreational users of the public lands to pay the costs of administering the permits. The proposal also allows the Bureau of Land Management to recover the actual costs of issuing and monitoring permits when the estimated costs exceeds certain levels, allows the authorized officer to require a nonrefundable partial prepayment to cover the cost of processing the application and to charge larger fees than those provided in the schedule if permitted by the Federal Land Policy Management Act of 1976 or the Land and Water Conservation Fund Act, as appropriate.

The following fees are required for special recreation uses of public lands administered by the Bureau of Land Management in accordance with proposed 43 CFR 8372.4(a)(1). This fee schedule will be effective upon the date of final publication in the Federal Register.

(1) Commercial use—a minimum of \$100 or the amount from the table below, whichever is greater, is required. The adjusted daily charge recognizes that operators provide discounts to certain customers and groups that may vary from the initially advertised customer rate schedules. The fee per user day will be based on the adjusted daily charge per customer rather than the advertised rate schedule. Additional adjustments may be made if the advertised daily rate includes long distance transportation costs or lodging in local communities before or after the permitted use.

Adjusted daily charge collected by permittee from each participant	Fee paid to the Bureau per user day
\$8.00 or less	\$25
8.01 to 20.00	.40
20.01 to 35.00	.80
35.01 to 50.00	1.30
50.01 to 75.00	1.90
75.01 to 100.00	2.60
100.01 to 125.00	3.40
125.01 to 150.00	4.10
150.01 to 175.00	4.90
175.01 to 200.00	5.60
200.01 to 250.00	6.75
250.01 to 300.00	8.25
Over 300.00	(¹)

¹Three percent of adjusted daily charge per participant.

(2) Competitive use. A minimum of \$2.00 per user day or 3 percent of the gross receipts, whichever is greater, is required. When use is both commercial

and competitive, the competitive fee shall be charged.

(3) Other uses. A minimum of \$2.00 per user day is required.

The existing regulations, at § 8372.4(d), include a complicated set of criteria for waiver of fees for use of the public lands for educational or scientific purposes, including the need to present proof of accreditation and to demonstrate that the institution is noncommercial or that the activity is not connected with commercial aspects of the institution. These requirements have been shown to be unnecessarily burdensome and are removed from the proposed rulemaking. Instead, the authorized officer would have discretion to require documentation of accreditation by Federal, State or local government agencies, or any other documentation necessary to show that the use proposed is educational.

Proposed amended § 8372.0-7 clearly states acts that are prohibited under the subpart. In addition to prohibiting use of the public lands without obtaining the permits and paying the fees required by the subpart, this section prohibits: Violation of stipulations or conditions in such permits; knowing participation in the events or activities for which the required permit has not been issued; and failure to post a copy of a commercial or competitive permit in plain sight where all participants can read it. The proposed rulemaking also adds a paragraph stating the criminal and civil penalties that may be incurred by violators.

The proposed rulemaking adds a new § 8372.1-3 excepting certain uses from the requirement to obtain Special Recreation Permits and pay fees. These include events sponsored or co-sponsored by the Bureau of Land Management, events traversing less than 1 mile of public land and beginning and ending on other land, and, in the discretion of the authorized officer, non-commercial events with fewer than 50 vehicles, no cash prizes, no public advertising, and in compliance with off-road vehicle designations.

The proposed rulemaking includes other amendments that are editorial only, removes unnecessary or confusing language from the existing regulations and adds a section on appeals. All decisions of the authorized officer will be held in full force and effect pending appeal unless the Secretary of the Interior rules otherwise.

This proposed rulemaking is being published to coordinate with the public consideration of the Proposed Special Recreation Permit Policy of the Bureau of Land Management, which was

published in the Federal Register on March 16, 1983. Copies of this proposed policy document may be obtained by calling the telephone number listed above. The deadline for submitting public comments on both this proposed rulemaking and the proposed policy will be June 21, 1983.

The principal authors of this proposed rulemaking are Bruce R. Brown and Robert I. Conquergood, Division of Recreation, Cultural and Wilderness Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There will be no significant impact on any user group, and the proposal favors no demographic group.

The proposed rulemaking would serve to protect the recreation resources and opportunities on the public lands. The proposed rulemaking would only affect individuals and groups using the public lands for certain recreation purposes, and educational institutions using the public lands for educational or scientific purposes. The proposed increase in fees will compensate the United States for administering the program, with no significant impact on any entity.

Information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1004-0119.

List of Subjects in 43 CFR Part 8370

Public lands—recreation, Recreation areas, Surety bonds.

PART 8370—[AMENDED]

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g-n), the Land and Water Conservation Fund Act of 1965, as

amended (16 U.S.C. 460/-6a), and the National Trails System Act (16 U.S.C. 1241 *et seq.*), it is proposed to amend Subpart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations as follows:

§ 8372.0-3 [Amended]

1. Section 8372.0-3 is amended by correcting the citation "16 U.S.C. 460(1-6a)" to read "16 U.S.C. 460/-6a."

2. Section 8372.0-5 is revised by:
a. Revising paragraph (b) to read as follows:

§ 8372.0-5 [Amended]

(b) "Actual expenses" are expenses necessarily incurred for the permitted activity or use. These include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual expenses do not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events or any monetary compensation for sponsors or participants."

b. Revising paragraph (e) to read as follows:

(e) "Educational use" is an academic activity sponsored by an accredited institution of learning.

3. Section 8372.0-7 is revised to read as follows:

§ 8372.0-7 Enforcement

(a) *Prohibited acts.* On all public lands, it is prohibited to: (1) Fail to obtain a permit and pay any fee required by this subpart; (2) violate stipulations or conditions of a permit issued under authority of this subpart; (3) participate knowingly in an event or use subject to the permit requirements of this subpart where no such permit has been issued; (4) fail to post a copy of any commercial or competitive permit where all participants have the opportunity to read it.

(b) *Penalties.* (1) Any person convicted of violating any prohibited act in this subpart may be subject to a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months. (2) Unauthorized users may be subject to civil action for unauthorized use of the public lands and their resources.

4. A new § 8372.1-3 is added to read as follows:

§ 8372.1-3 Exceptions.

(a) Special Recreation Permits are not required for uses that are sponsored or co-sponsored by the Bureau of Land Management.

(b) The authorized officer may determine that permits and fees are unnecessary where a use or event begins and ends on non-public lands, traverses less than 1 mile of public lands, and poses no threat of significant damage to public land resource values.

(c) The authorized officer may waive permit and fee requirements for off-road vehicle competitive events that are not commercial when the events comply with off-road vehicle designations for the use area, no cash prizes are awarded, fewer than 50 vehicles are involved and there is no public advertising for the event.

5. Section 8372.4 is amended by:
a. Amending paragraph (a) to read as follows:

§ 8372.4 [Amended]

(a) *Fees.* (1) Fees for Special Recreation Permits shall be established and maintained by the Director, Bureau of Land Management, and may be adjusted from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Manual of the Bureau of Land Management, published periodically in the Federal Register and otherwise made generally available to the public.

(2) The authorized officer may charge fees larger than the minimum set in the current fee schedule if the authorized officer determines that such larger fees are needed to compensate the United States for costs incurred in connection with the issuance of permits and for uses of the public lands and their resources under said permits. The authorized officer shall notify the applicant of any fee larger than that provided in the schedule in writing within 15 days of receipt of the application.

(3) The authorized officer may require a nonrefundable prepayment of all or a portion of the fees from the schedule, not to exceed the estimated cost of processing the application, before processing the application.

(4) Actual costs to the United States shall be charged in lieu of the fees provided in the schedule when the estimated cost of issuing and monitoring the permit (estimated at the time of application) exceeds \$5,000, except when the total estimated fees from the schedule over the term of the permit exceed the estimated actual cost. In that case, the fees from the schedule shall be charged. The authorized officer shall

notify the applicant in writing of such charges within 15 days of receipt of the permit application and shall not process said application until payment has been made for such charges.

* * *

b. Removing paragraph (b) in its entirety.

c. Redesignating paragraphs (c) and (d), as (b) and (c), respectively.

d. Amending paragraph (c), formerly paragraph (d), by removing paragraphs (c) (4) and (5) in their entirety and amending paragraph (c)(3) to read as follows:

* * *

(c) * * *

(3) Applicants for waiver of fees on this basis may be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State or local government bodies or any other documentation necessary to demonstrate educational use as defined in section 8372.0-5(e) of this title. The use of recreational resources for which a waiver on this basis is requested shall relate directly to scientific or educational purposes and shall not be primarily for recreational purposes.

6. New § 8372.6 is added to read as follows:

§ 8372.6 Appeals.

(a) Any person adversely affected by a decision of the authorized officer under this part may appeal under Part 4 of this title from any final decision of the authorized officer.

(b) All decisions of the authorized officer under this Part shall remain effective pending appeal unless the Secretary rules otherwise.

Garrey E. Carruthers,
Assistant Secretary of the Interior.

April 14, 1983.

[FR Doc. 83-12140 Filed 5-5-83; 8:45 am]

BILLING CODE 4310-84-M

federal register

**Friday
May 6, 1983**

Part VI

Federal Emergency Management Agency

**Transportation Accident Planning and
Preparedness Guidance; Availability of
Guidance Document**

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****Transportation Accident Planning and
Preparedness Guidance; Availability of
Transportation Guidance Document**

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice of Availability of a
transportation accident planning and
preparedness guidance document and
invitation for submittal of comments.

SUMMARY: The transportation guidance
document, *Guidance for Developing
State and Local Radiological
Emergency Response Plans and
Preparedness for Transportation
Accidents*, is available for public
distribution and comment. Copies will
be distributed to State and local
governments by the Federal Emergency

Management Agency (FEMA) for
review, comment and use.

This document provides planning and
preparedness guidance in the form of 14
planning objectives and related criteria
for use by State and local governments
in developing emergency response plans
for transportation accidents involving
radioactive materials. The document
also provides background information to
support the application of the guidance
to specific jurisdictions and to explain
the unique characteristics of
transportation accidents. This document
is intended for interim use by State and
local governments until a final edition is
published early in 1984. Comments
received by FEMA on the current,
interim-use document will be analyzed
with the results being used to develop
the final edition.

This document has been developed by
the Federal Radiological Preparedness

Coordinating Committee's
Subcommittee on Transportation
Accidents which is co-chaired by the
U.S. Department of Transportation and
FEMA.

A copy of this document may be
obtained from the: Federal Emergency
Management Agency, P.O. Box 8181,
Washington, D.C. 20024. Please
reference the title of the document in
your request.

Comments on this document will be
received through September 6, 1983 and
should be addressed to: Rules Docket
Clerk, Federal Emergency Management
Agency, Room 835, 500 C Street, SW.,
Washington, D.C. 20472.

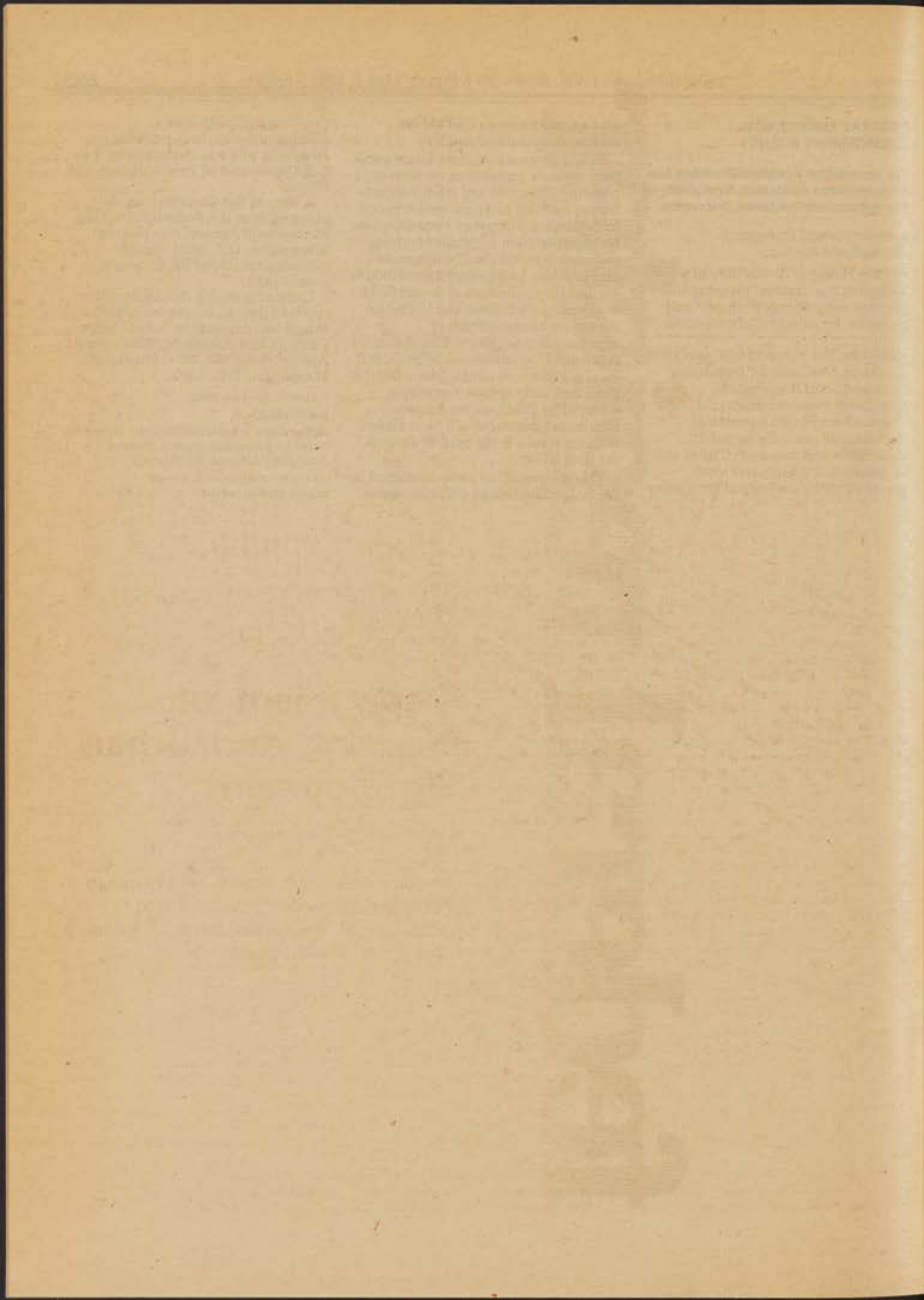
Dated: April 29, 1982.

Joe D. Winkle,

*Acting Deputy Associate Director, State and
Local Programs and Support, Federal
Emergency Management Agency.*

[FR Doc. 83-12141 Filed 5-5-83; 9:45 am]

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Register Federal Register

Friday
May 6, 1983

Part VII

Department of Housing and Urban Development

Office of the Secretary

Nondiscrimination Based on Handicap in
Federally-Assisted Programs and
Activities of the Department of Housing
and Urban Development

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 8

[Docket No. R-83-528]

Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule.

SUMMARY: HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development. The rule implements Section 504 of the Rehabilitation Act of 1973, as amended.

DATES:

Effective date: June 1, 1983.

Comment due date: August 4, 1983.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

John Putman, Special Advisor to Deputy Under Secretary for Intergovernmental Relations, Office of Housing, Office of Policy and Budget, Room 10184 at the above address (202) 755-6732. A telecommunications device for deaf persons (TDD) is available at (202) 426-0016. These are not toll free numbers. This notice will be available on tape for persons with vision impairments in the office of the Rules Docket Clerk shown above.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) provides that "No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."

On April 19, 1978, the Department published a Notice of Proposed Rulemaking (43 FR 16652) for public comment (the "1978 proposed rule"). In addition, 10 public hearings were

conducted throughout the country. More than 225 individuals and organizations presented testimony at the public hearings. Transcripts were made of each public hearing and were analyzed along with 258 written comments received from other sources. The largest number of comments (c. 185) were received from organizations representing handicapped people. The next largest group (c. 131) was Federal, State or local agencies, including some 31 Housing Authorities. Seventeen comments were received from individuals or organizations representing the housing industry.

In general, both the organizations representing disabled persons and the housing industry were critical of the 1978 proposed rule, but for different reasons. The principal concern expressed by the disabled consumer groups was the number of provisions for waivers and exceptions. On the other hand, most of the housing industry representatives felt that these should be expanded, and that funds should be provided by HUD to cover any costs incurred as a result of Section 504 requirements. Similarly, public agencies questioned the source of funds for assuring accessibility and were concerned that such costs would reduce the level of funds currently available for program purposes.

Subsequently, two events occurred which have direct bearing on the Department's implementation of Section 504 as it applies to HUD programs. These were: (1) the decision of the United States Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and subsequent appellate decisions regarding the extent of recipient's obligations to accommodate the needs of handicapped persons, discussed more fully below in connection with the "program accessibility" provisions of the regulations, and (2) a Report to Congress (B-197756, June 19, 1981) issued by the Comptroller General entitled "Weaknesses in the Planning and Utilization of Rental Housing for Persons in Wheelchairs."

The GAO report concluded that HUD and the Farmers Home Administration "have no reliable statistics on the number of people using wheelchairs in the United States or on the characteristics of such persons, for example, their geographic location, age, income, family size, and need for federally subsidized housing . . . Also, they have no information to determine if a market exists for accessible units in the area serviced by the housing projects they support." The GAO report went on to state that: "HUD and FmHA need to have such information to

determine if a market exists for accessible units and whether policies relating to housing the handicapped adequately respond to such a market."

The GAO surveyed 847 accessible housing units and determined that only 27% were actually occupied by persons using wheelchairs. The report concluded that HUD and FmHA need to do more with respect to out-reach programs and effectively advertising the availability of units accessible for handicapped individuals. Of equal importance to regulatory implementation of Section 504, GAO also recommended the elimination of nationwide percentage goals (previously adopted administratively under various HUD and FmHA programs) in favor of establishing local or regional goals, based upon a market analysis of demand.

Because of substantial changes that have been made from the 1978 proposed rule on grounds not fully discussed in connection with the publication of the 1978 proposed rule, the Department normally would publish this regulation as a revised proposed rule for further comment, rather than for immediate effect. However, on June 16, 1981, the United States District Court, Central District of California, issued an Order requiring HUD and certain other Federal agencies to publish final regulations implementing Section 504 of the Rehabilitation Act of 1973 on an expedited basis. *Paralyzed Veterans of America, et al. v. William French Smith, et al.*, No. 79-1979 WPG, June 16, 1981. While the Department does not construe the District Court's order as necessarily overriding the public notice and comment requirements otherwise applicable, the Department believes, on balance, that the public interest requires that regulatory implementation of Section 504 with respect to HUD programs not be subjected to further delay. In reaching this conclusion, the Department has taken into account the fact that principal substantive requirements of Subpart C of the interim rule, regarding program accessibility, already are in effect through program regulations and the HUD Minimum Property Standards.

Accordingly, this rule is being published as an interim rule for effectiveness at the earliest date possible, subject to certain statutory requirements noted below. Public comments are solicited for consideration prior to issuance of a final rule.

At the outset, it will be useful to note certain preliminary observations regarding the scope and nature of Section 504 and its regulatory

implementation, as well as to note highlights of the history of Section 504's regulatory implementation by the Federal Government which form the backdrop of HUD's interim rule.

The language of Section 504 is almost identical to the nondiscrimination provisions of Section 601 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Section 901 of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and, like those statutes, establishes a governmentwide policy against discrimination in Federally assisted programs and activities—in this case, on the basis of handicap.

However, as was noted by the Department of Health, Education and Welfare (as it then was) in 1976 when first addressing the problems of regulatory implementation of Section 504:

"Section 504 * * * differs conceptually from both titles VI and IX. The premise of both title VI and title IX is that there are no inherent differences or inequalities between the general public and the persons protected by these statutes and, therefore, there should be no differential treatment in the administration of Federal programs. The concept of section 504, on the other hand, is far more complex. Handicapped persons may require different treatment in order to be afforded equal access to federally assisted programs and activities, and identical treatment may, in fact, constitute discrimination. The problem of establishing general rules as to when different treatment is prohibited or required is compounded by the diversity of existing handicaps and the differing degree to which particular persons may be affected. Thus, under section 504, questions arise as to when different treatment of handicapped persons should be considered improper and when it should be required.

Because the concepts underlying section 504 were new and complex and few judicial precedents existed in the area, the very general language of the statute creates serious problems of interpretation. There is almost no substantive legislative history surrounding the development and enactment of section 504. There were, for example, no public hearings accompanying the original bills, and there was almost no substantive floor debate." (41 FR 20296, May 17, 1976).

At the time of the above writing, HEW also noted that there was then "no legislatively directed scheme of enforcement such as those provided in section 602 of Title VI * * * and 902 of Title IX" (ibid.). However, that void had been filled by Executive Order 11914, issued by President Ford, which prescribed specific enforcement procedures and sanctions for noncompliance, all based on precedents from Title VI and Title IX. Subsequently, Congress established legislatively, through Section 120(a) of the

Rehabilitation Amendments of 1978 (adding Section 505 of the Rehabilitation Act, 29 U.S.C. 794-a), that the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance * * * under section 504 * * *."

As indicated, the first attempt by an Executive Department to address the issues of regulatory implementation of Section 504 was by HEW, which published a notice of intent to publish a proposed rule regarding programs or activities receiving Federal financial assistance from HEW in May 1976 (41 FR 20296), followed by a notice of proposed rulemaking in July 1976 (41 FR 29548) and a final rule in May 1977 (42 FR 22677). That final rule, as applicable to the programs of the Department of Health and Human Services, is now codified at 45 CFR Part 84. As will be noted below in the discussion of particular provisions, the HEW regulation was based in significant part upon provisions of HEW's then-existing regulations implementing Title VI and Title IX.

Executive Order 11914, referred to above, also assigned to HEW the task of issuing general standards for other departments and agencies of the Federal government to follow in promulgating regulations implementing Section 504. A proposed rule implementing this requirement of Executive Order 11914 was published by HEW in June 1977 (42 FR 32264) and a final rule, originally codified at 45 CFR Part 85, was published in January 1978 (43 FR 2132). In publishing its proposed rule for effectuating Section 504 to programs and activities receiving Federal financial assistance from HUD, the Department relied principally upon 45 CFR Part 85 but also adapted additional provisions from 45 CFR Part 85. The HEW regulation implementing Executive Order 11914, as it existed at 45 CFR Part 85 at the time of publication of HUD's proposed rule, is sometimes referred to in this preamble as the "HEW Implementation Guidelines."

By Executive Order 12250, issued by President Carter in November 1980, the authority of HHS (as successor to HEW) to promulgate general standards under Section 504 was transferred to the Department of Justice, which readopted the HEW Implementation Guideline without substantial change (except for modification of program accessibility provisions relating to mass transit systems made necessary by the decision of the District of Columbia Circuit Court of Appeals in *American Public Transit Association v. Lewis*, 655 F.2d 1271

(D.C. Cir. 1981)), 28 CFR Part 41, adopted at 46 FR 40686, 40687 (August 11, 1981). As re-adopted by the Department of Justice, the HEW Implementation Guidelines are referred to herein as the "DOJ Implementation Regulation."

The complexity of the issues involved in regulatory implementation of Section 504 which HEW noted more than six years ago have not diminished since that time. Judicial authority commencing with *Southeastern Community College* has called into question certain of the principal assumptions of the initial rulemaking as applied in particular contexts that are analogous, although not identical, to contexts pertinent to HUD programs. The Department is obliged to adhere as closely as possible to authoritative judicial interpretations of the scope of Section 504, as nearly as the Department is able to discern their direction.

As discussed more fully below in relation to Subpart C of this interim rule, the guidance that may be learned from judicial consideration to date of the program accessibility concept is less than complete, for while several decisions have either invalidated or criticized portions of agency regulations as requiring too much, no decision to date of which the Department is aware has addressed the concept in the context of housing facilities.

In engaging in substantive rulemaking under the authority of Section 504, it is not required absolutely that the Department define with precision the reach of the statutory mandate, and the Department does not pretend that it has done so in this rulemaking. Notwithstanding uncertainty that will persist regarding the exact limits of the statute itself, the Department believes that the provisions now being adopted for administrative implementation are reasonably related to the purposes of Section 504 while consistent with achievement of the objectives of the program statutes authorizing the Federal financial assistance (cf. Section 602, Civil Rights Act of 1964, 42 U.S.C. 2000d-1, made applicable to Section 504 enforcement by Section 505 of the Rehabilitation Act; *Lau v. Nichols*, 414 U.S. 563, 571 (1974) (Stewart, J., concurring); *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 268, 280-281 (1969)).

The regulation is divided into four subparts. Subpart A (General Provisions) outlines applicability, defines the important terms that are used throughout the regulation, and states in general terms the discriminatory acts that are prohibited. Subpart B (Employment) prescribes

requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance. Subpart C (Program Accessibility) sets forth the requirement that no otherwise qualified handicapped person shall be denied accessibility to federally-assisted programs or activities. It also sets forth specific requirements and standards for non-housing and housing facilities. Subpart D (Enforcement) sets forth administrative enforcement provisions, and Subpart E governs the practice for hearings, decisions and administrative review, supplementing Subpart D.

Subpart A—General Provisions

Section 8.1 states the purpose of Part 8 as effectuating Section 504 with respect to any program or activity receiving Federal financial assistance from HUD. It notes that Part 8 does not effectuate Section 504 as it applies to any program or activity conducted by the Department. This refers to an amendment to Section 504, effected by Section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which extended its coverage to "any program or activity conducted by any Executive agency or by the United States Postal Service." The amendment further requires the head of each agency to "promulgate such regulations as may be necessary to carry out" the amendment and further requires that copies of any proposed regulation be submitted to "appropriate authorizing committees of the Congress" thirty days before taking effect. Regulations effectuating Section 504 as to Federally conducted programs are subject to the coordinating authority of the Department of Justice under Executive Order 12250. HUD is advised that the Department of Justice intends to establish an implementation guideline relating to Federally conducted programs, but no such guidance has been established to date. The Department anticipates that it will publish regulations effectuating Section 504 as to programs and activities conducted by the Department after evaluation of public comments received on the interim rule published herewith.

Section 8.1 also notes that compliance with the requirements of Part 8 does not assure compliance with requirements for accessibility by the physically handicapped imposed pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151, et seq.), where applicable. HUD regulations implementing the Architectural Barriers Act are located at 24 CFR Parts 40 and 41.

Paragraph (b) of Section 8.1 provides that the policies and standards for compliance established in Part 8 are established in contemplation of, and with a view to enforcement through, program administration and the administrative procedures described in Subparts D and E of Part 8. In view of the uncertainty noted above as to the exact limits of the statute itself, the Department wishes to emphasize that the policies and substantive requirements adopted in Part 8 are adopted only with a view to program administration by the Department and to enforcement through the procedures authorized by Section 505 of the Rehabilitation Act (including judicial enforcement of contractual assurances by the United States).

Section 8.2, identifying programs or activities to which Part 8 applies, is without substantive change from the proposed rule.

Section 8.3 defines terms used in Part 8. In its proposed rule, the Department generally provided definitions only of terms also defined in the HEW Implementation Guideline or in 45 CFR Part 84. For further clarification and in response to comments, the Department is adding definitions of further terms, including "accessible," "adaptable," "alteration," "multifamily project," and "project."

Several commenters objected to the notion set forth in the preamble to the proposed rule that the term "program accessibility," which was not defined in either 45 CFR Part 84 or 45 CFR Part 85, was not susceptible to a Departmentwide definition. Instead, program accessibility was defined separately with respect to different HUD program areas. Upon reconsideration, the Department has determined that program or activity accessibility can be defined in broad terms. Further, while "accessibility" in the context of HUD programs relates uniquely to the architectural needs of physically handicapped persons, program accessibility and activity accessibility clearly have a broader meaning applicable to all handicapped persons. For example, even though a facility in which a federally assisted program is conducted is free of architectural barriers and thus meets requirements for facility accessibility, the program is not accessible if management policies and procedures effectively bar handicapped people from participating in or otherwise benefiting from the program or activity. On the other hand, a program which is conducted in an inaccessible existing facility can be made accessible without altering the

facility, where the program or activity can be delivered or otherwise be made available to a handicapped beneficiary without loss of essential program benefits.

With the foregoing consideration in mind, "accessible" is defined separately in the interim rule in the distinct contexts of program or activity accessibility, facility accessibility, and accessibility of an individual dwelling unit. The definition of "accessible," when used in relation to a facility or dwelling unit, are based in part upon definitions contained in the Minimum Guidelines and Requirements for Accessible Design issued recently by the Architectural and Transportation Barriers Compliance Board (the "ATBCB") (47 FR 33862, to be codified at 36 CFR Part 1190). An "accessible" dwelling unit includes an "adaptable" unit, i.e., one so planned and constructed that converting it to an accessible unit for a handicapped occupant is simply a matter of installing or adjusting such items as grab bars, lights, buzzers or kitchen equipment, and no major construction work such as widening doors or moving walls is required.

A definition of "alteration" has been added to refer consistently to structural changes in an existing facility. In the proposed regulation no definition was provided, and various synonyms or near synonyms such as remodeling, rehabilitation or retrofitting were used in the text. The definition utilized is based on that adopted by the ATBCB in the Minimum Guidelines.

In its proposed rule, the Department proposed utilization of the definition of "Federal financial assistance" used in the HEW Implementation Guideline. In this interim rule, however, the Department has adapted the definition contained in the Department's own Title VI regulation (24 CFR Part 1) on the ground that it is better tailored to encompass forms of assistance under HUD programs.

Public comments revealed concern that the proposed definition of "Federal financial assistance" excluded procurement contracts and contracts of insurance or guaranty. Procurement contracts are covered by the Department of Labor's regulation under Section 503 of the Act. In excluding programs of insurance and guaranty, the Department is following a Justice Department opinion of September 23, 1977, which advised that Congress intended the reach of Section 504 to be consistent with Title VI and Title IX both of which exclude programs of insurance and guaranty.

The definition of "handicapped person" is unchanged from the proposed rule, which in turn incorporated without change the definition then contained in the HEW Implementation Guideline and now continued in the DOJ Implementation Regulation. This definition also conforms to the statutory definition of handicapped person applicable to Section 504 which is set forth in Section 111(a) of the Rehabilitation Act Amendments of 1974 (29 U.S.C. 706). While there was strong support among commentators on the proposed rule for adoption of this definition, a number of related concerns were expressed as follows:

(1) *Coverage.* Representatives of several disability groups wanted their particular disability group to be specifically mentioned as eligible. The definition is written broadly to cover any person who has a physical or mental impairment that substantially limits one or more major life activities.

Several commentators mentioned the need to define specific learning disabilities, and to include the sensorily deprived and the minimally brain damaged. Physical or mental impairment is defined to include, among other impairments, "specific learning disabilities." The Department will interpret the term as it is used in Section 602 of the Education of the Handicapped Act, as amended, to describe such conditions as perceptual handicap, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Concern was also expressed by advocates of the mentally ill and the autistic with regard to their coverage. Both groups are clearly included in the "handicapped person." Whether they also are "qualified" for participation in a particular program or activity despite their handicap is a separate question.

(2) *Terminology.* Several commentators requested that the term "handicapped" be replaced by "disabled" wherever possible, and that the term "emotionally disturbed" be substituted for "mentally ill." Since both the Section 504 and existing regulatory implementation thereof use "handicapped," HUD will continue to use "handicapped" instead of "disabled" in Section 504 contexts. The term "emotionally disturbed" is considered too vague for regulatory purposes.

(3) *Eligibility for housing.* Eighteen (18) commentators recommended that the definition of handicapped person be amended to reflect the different types of dwelling units needed by different types of handicapped persons. Their concern was that non-handicapped or non-physically handicapped persons might be allowed or even required to use units

adapted for the physically handicapped. Accordingly, the Department has added a provision at § 8.26 which addresses these concerns.

(4) *Interpretation of definition.* Several commentators stated that more guidance was needed in order for recipients to make a determination that an individual "has a history of" or "record of" an impairment, or "is regarded as having an impairment." Their particular concern was over the inclusion of drug addicts and alcoholics in the definition of handicapped persons. On this issue, HUD is following an opinion the Attorney General, dated April 12, 1977, which concluded that drug addiction and alcoholism are "physical or mental impairments" within the meaning of Section 7(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 706), and that drug addicts and alcoholics are therefore "handicapped" for the purposes of Section 504. However, this does not necessarily mean that such individuals are "qualified handicapped persons" for the purposes of this rule. As noted by HEW in its analysis of 45 CFR Part 84, set forth in Appendix A thereto:

"It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestation of the condition may be taken into account in determining whether he or she is qualified."

This interpretation is reflected in the definition of "qualified handicapped person," as discussed below.

A definition of "project" has been added in order to differentiate it from "facility" and in order to clarify the application of requirements for accessible dwelling units. As here defined, a project may include one or more buildings, sites or site developments, treated administratively as a single HUD assisted project. "Multifamily project" is defined as a project containing more than two dwelling units. The threshold of two units is chosen because it represents the demarcation between HUD's Minimum Property Standards for One- and Two-

Family Dwellings and the Minimum Property Standards for Multifamily Dwellings.

As in the proposed rule, the definition of a "qualified handicapped person" with respect to a program or activity other than employment refers to one "who meets the essential eligibility requirements for participation in such program or activity or for receipt of benefits therefrom." For clarification, a provision is added that "essential eligibility requirements" include stated program eligibility requirements such as income or citizenship or alien status, as well as

"... * * * implicit requirements inherent in the nature of the program or activity, such as that an occupant of multifamily housing be capable of independent living (except to the extent that necessary support services are contemplated to be provided in connection with the program or activity or will otherwise be available to such occupant) and of complying with all obligations of occupancy, including the obligation to conduct himself or herself in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodation and will be conducive to maintaining the housing facility in a decent, safe and sanitary condition. For example, a chronically mentally ill person whose condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his own health or safety in the absence of necessary supportive services may be 'qualified' for occupancy in a project where such supportive services are provided but may not be 'qualified' for a project lacking such services."

The example referring to the chronically mentally ill confirms the Department's current practice under the Section 202 direct loan program for housing for the elderly or handicapped (see Announcement of Funding Availability published April 20, 1982 (47 FR 16892)). The Department emphasizes, however, that the factor of capability of independent living is not to be taken as an invitation to inquiries which infringe upon the privacy or dignity of applicants. Particularly in the case of persons whose handicaps are physical, a strong presumption in favor of the individual's own assessment of his or her capabilities is warranted in the absence of substantial evidence to the contrary. The mere existence of a person's physical disability, of course, does not constitute such evidence. For example, the fact that a person requires the use of a wheelchair is not evidence that he or she is incapable of independent living. The "significant risk" test is based upon *Doe v. New York University*, 666 F. 2d 761 (2d Cir. 1981). The Department does not regard the foregoing clarification as a departure from the intent of its proposed rule and

reiterates the following from the preamble to the proposed rule:

" * * The Department wishes to emphasize that this regulation does not prohibit denying services or benefits of a program, such as occupancy in a housing project assisted by the Department for bona fide reasons, even if those reasons are also related to the handicap, so long as the basis for such denial is failure to meet eligibility criteria which are applied to all potential beneficiaries, handicapped and non-handicapped. Similarly, this regulation does not prohibit turning down a handicapped job applicant for bona fide job-related reasons, even if those reasons are also related to the handicap. For example, an applicant who could not perform the basic physical requirements for the position of 'housepainter' would not be considered a 'qualified handicapped person.' Likewise, if a handicapped individual had a history or pattern of anti-social behavior including, for example, criminal activity, he or she may be denied services or benefits of a program on the same basis as a non-handicapped person, even if the anti-social behavior is related to the handicap." (43 FR 16652)

The definition of "qualified handicapped person" excludes, with respect to both employment and programs or activities other than employment, any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug use, would constitute a direct threat to property or the safety of others. The derivation of this exclusion from an opinion of the Attorney General is referred to above. The Department further notes that Congress responded in part to the concerns expressed at the time of adoption of the HEW regulation by providing, in 1978, that for purposes of Section 504 "as such section relates to employment," the term "handicapped individual" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others" (29 U.S.C. 706, as amended by Section 122(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978). Inasmuch as the statutory provision relates to the term "handicapped individual" and not the term "qualified handicapped individual," the Department does not consider the provision exclusive, either in terms of activity for which an alcoholic or drug abuser may be found

not qualified (i.e., employment) or in terms of the basis for finding such individual not qualified for a particular program or activity (i.e., "would constitute a direct threat to property or the safety of others"). The Department believes that an alcoholic or drug abuser may be found not qualified for a program or activity for failure to meet "essential eligibility requirements" of the program, as described in the rule, for reasons that may fall short of "a direct threat to property or the safety of others."

The proposed rule included a definition of "small provider" and exempted recipients meeting the definition from various specific requirements of the regulation such as preparation of transition plans and completion of required alteration within a three-year period. Over 100 commentators stated a position that too many recipients were covered by the definition and thus exempted from requirements of the rule. In view of other changes made in the regulations, the Department does not believe that the general exemption from "small providers" is required, and the definition has been eliminated. However, the Department invites comment as to whether such an exception may be advisable or appropriate with respect to any specific requirements of the regulations.

Section 8.4 states a general prohibition against discrimination on the basis of handicap in HUD-assisted programs and enumerates specific discriminatory acts prohibited. This section of the proposed rule was identical to that contained in the HEW Implementation Guideline (now continued in the DOJ Implementation Regulation), which in turn was based upon Title VI precedents. In the interim rule, the provision is unchanged from that contained in the proposed rule, except for additions of the word "solely" before "on the basis of handicap" and deletion of the words "or benefits from" from the phrase "any program or activity that receives or benefits from Federal financial assistance." These changes are made to conform the regulatory language to that of the statute, and deletion of the phrase "or benefits from" is not intended to alter the jurisdictional reach of Section 504 as it applies to HUD-assisted programs. The Department is aware that the phrase "or benefits from" may be seen as critical in the context of certain other government programs but is not aware of a context involving HUD programs where the phrase would make such a difference. However, the Department invites comment as to

specific contexts in which an issue as to the jurisdictional reach of Section 504 may be seen as arising based upon this language.

The Department also invites comment as to whether the description of specific actions prohibited may raise special problems in the context of handicapped persons notwithstanding their appropriateness in the separate contexts of nondiscrimination based upon race, color, or national origin. This invitation is based upon the recognition, referred to above, of the different conceptual premises underlying Title VI and Title IX on the one hand, and Section 504 on the other.

Section 8.4(c) is unchanged from the proposed rule. It reiterates the provision of the DOJ Implementation Regulation which states that the exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons, or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part. It further notes that certain of the Department's programs operate under statutory definitions of handicapped person which are more restrictive than the definition contained in § 8.3, and such definitions are not superseded or otherwise affected by this regulation. The differing statutory program definitions are provided in detail at Appendix B.

Section 8.4(d) provides, in language unchanged from the proposed rule, that recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons. A number of comments recommended that this section be expanded or made more specific. The Department wishes to emphasize that it fully supports the concept of making programs available in the most integrated setting appropriate to the needs of qualified handicapped persons, and that this concept is key to the effective implementation of the program accessibility requirements. "Most integrated setting" refers not only to housing integrated into the community, but also to the availability of community and related services. Thus, in considering what constitutes "the most integrated setting," a recipient should verify not only that the setting itself is like those where non-handicapped people live, work and socialize but also that services such as shopping and transportation are available. This concept also is incorporated into § 8.25 of the interim

rule, regarding distribution of accessible dwelling units within a project.

Subpart B—Employment

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients. For the proposed rule, HUD incorporated directly the employment provisions of the HEW Implementation Guideline with the exception of the provision regarding preemployment inquiries, which incorporated additional language from HEW's Section 504 regulation relating to HEW programs (45 CFR 84.14).

Several Federal circuit courts which have considered coverage of employment discrimination under section 504 have ruled that employment is covered under section 504 only where a primary purpose of the assistance is to provide employment. *U.S. v. Cabrini Medical Center*, 639 F. 2d 908 (2d Cir. 1981); *Carmi v. Metropolitan St. Louis Sewer District*, 820 F. 2d 872 (8th Cir. 1980), cert. denied, 449 U.S. 892 (1980); *Trageser v. Libbie Rehabilitation Center, Inc.*, 590 F. 2d 87 (4th Cir. 1978), cert. denied, 442 U.S. 947 (1979); *Scanlon v. Atascadero State Hospital*, 677 F. 2d 1271 (9th Cir. 1982).

The Department of Justice has taken the position in litigation that these holdings misinterpret section 504. The holdings apply the limitation on employment coverage embodied in section 604 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-3) to employment claims under section 504 by reason of section 505(a)(2) of the Rehabilitation Act, which was added by 1978 amendments and provides that the "remedies, procedures and rights" set forth in Title VI shall be available to persons aggrieved by actions which violate section 504 (29 U.S.C. 794a(a)(2)). The decisions cited above have held that section 505(a)(2) also extended Title VI's limitation on employment coverage to section 504. The Justice Department contends that the legislative history of section 505(a)(2) unequivocally demonstrates that Congress only intended to incorporate Title VI-patterned procedural remedies in the Rehabilitation Act did not intend to curtail substantive rights with respect to employment claims. The Justice Department's view has been adopted recently by two Courts of Appeals in *Jones v. Metropolitan Atlanta Rapid Transit Authority*, 681 F. 2d 1376 (11th Cir. 1982), and *LeStrange v. Consolidated Rail Corp.*, 687 F. 2d 767 (3rd Cir. 1982), cert. granted, — S.Ct. (Feb. 22, 1983). In addition, the Supreme Court recently has rejected a somewhat similar attempt to read the limitation on employment coverage embodied in

Section 604 of Title VI into Title IX of the Education Amendments of 1972. *North Haven Board of Education v. Bell*, 102 S.Ct. 1912 (1982). Accordingly, HUD believes it appropriate to continue to adhere to its previously proposed position that Section 504 extends to discrimination in employment even where the provision of employment is not the primary objective of the Federal financial assistance. However, pending further clarification of the law, § 8.14 provides that the requirements of this Subpart B will not be enforced where employment is not a primary objective of the Federal financial assistance in States located in the Second, Fourth, Eighth, and Ninth Circuits (i.e., New York, Connecticut, Vermont, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Hawaii).

Section 8.10 of the interim rule states the general prohibition against discrimination in employment and lists activities connected to employment to which the prohibition applies. It is substantially unchanged from the proposed rule, and is consistent with the DOJ Implementation Regulation, except for addition of the word "solely" and deletion of the phrase "or benefit from" for the reasons stated above.

Section 8.11 of the interim rule requires a recipient to make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. The Department emphasizes that the requirement assumes that the handicapped applicant or employee is a "qualified handicapped person" with respect to the essential elements of the employment. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes under hardship to the employer, the failure to hire or promote the handicapped person does not constitute prohibited discrimination.

The largest number of comments on this subpart of the proposed rule (approximately 79 out of a total of 129) criticized the vagueness and lack of examples for the terms "reasonable accommodation" and "undue hardship." For additional guidance, the Department has incorporated into the interim rule

further provisions from the HHS Section 504 regulations relating to HEW programs. Subsection (b) of § 8.11 makes clear that reasonable accommodation is intended to include, but is not limited to, the modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include the relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons.

Subsection (c) of § 8.11, based upon 45 CFR 84.12, provides that in determining whether an accommodation would impose an "undue hardship" on the operation of a recipient's program, factors to be considered include: (1) The overall size of the recipient's program with respect to the number of employees, number and type of facilities, and size of budget; (2) the type of the recipient's operation, including the composition and structure of the recipient's workforce; and (3) the nature and cost of the accommodation needed.

The weight given to relevant factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, it would be considered reasonable for a large developer to accommodate an architect who is confined to a wheelchair by rearranging the workspace to permit easier access, by providing ramps, and by modifying restroom facilities so that they are accessible to and usable by the handicapped employee. On the other hand, a small developer might not be required to spend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing.

Section 8.12 of the proposed rule, based on the HEW Implementation Guideline, would have prohibited a recipient from using employment tests and criteria "that discriminate against handicapped persons" and would have required that a recipient ensure that employment tests "are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills."

For the interim rule, the department has adopted the somewhat clearer provisions of 45 CFR Part 84. Thus, § 8.12 prohibits employers from using tests or other selection criteria that screen out, or tend to screen out, handicapped persons unless the tests or criteria are shown to be job-related. This section takes into account that

some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be essential for the performance of the job in question and, yet, would disqualify a handicapped person. The recipient must select and administer tests so as best to ensure that the test will measure a handicapped person's actual ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except where such skills are the factors that the test purports to measure. For example, a person with a speech impediment might be well qualified for jobs that do not and need not require an ability to speak clearly. Yet, if given an oral test, the person would be unable to perform in a satisfactory manner. The test would not, therefore, predict job performance, but instead would reflect impaired speech.

Section 8.14 of the proposed rule, relating to preemployment inquiries, was based upon the HEW Implementation Guideline and also included part, but not all, of the fuller provisions of 45 CFR 84.14. For the interim rule, the Department has incorporated further provisions of 45 CFR 84.14. As revised, the section (renumbered § 8.13) contains a general prohibition against preemployment inquiries regarding a person's handicapped status. However, an employer may inquire into an applicant's ability to perform job-related tasks such as an applicant's ability to perform a job safely. For example, an employer may not ask if an applicant has a particular handicap, but may ask whether the person can perform a particular job without endangering his or her own well-being or that of other employees.

Subpart C—Program Accessibility

This subpart sets forth the requirements, methods and standards for making Departmental programs accessible.

In the Department's proposed rule as well as in the current DOJ Implementation Regulations, the "program accessibility" requirements deal exclusively with physical access to facilities by physically handicapped persons. However, "program accessibility" in its fullest sense is not limited to physical architectural barriers but includes communications barriers and other, perhaps less tangible, barriers as well. Given the nature of the Department's programs as well as the extent of the Department's evolving experience to date, the primary focus of Subpart C remains architectural barriers. In order to emphasize the broader general reach of the "program

accessibility" requirement, however, the section stating the general requirement has been restated without reference to facilities. As revised, Section 8.20 states that each program or activity which receives Federal financial assistance from HUD shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified handicapped persons. The Department invites comment as to specific further provisions which may be appropriate to further accessibility of the Department's programs outside the context of architectural barriers.

Subpart C, as revised, includes the scope of Subparts E, F and G of the proposed rule, which pertained to individual program areas (Low-Income Public Housing and Section 8 Housing Programs; Other Subsidized Housing Programs; and Community Planning and Development Programs), and those proposed subparts have been eliminated. As revised, the internal organization of Subpart C is as follows. Section 8.20, stating the general requirement as described above, is followed by a section dealing with non-housing facilities within which a covered program or activity is conducted or where application for participation therein is made or benefits distributable pursuant to the program or activity are distributed. This section would apply, for instance, to a facility where a program or activity assisted by Community Development Block Grant funds is conducted, or to an office of a public housing authority where applications for housing assistance are made. This section is followed by a series of sections dealing with housing programs. Finally, Section 8.30 prescribes the standards for physical accessibility to be followed where required, both for housing and non-housing facilities.

As indicated, the principal focus of the program accessibility concept in the context of HUD programs relates to architectural barriers. This is the area having the greatest impact on both recipients and program beneficiaries and potential beneficiaries, and it also is the area where the least guidance is available from the statute itself or its legislative history.

Section 504, on its face, does not prohibit or otherwise refer to architectural barriers, and the legislative history of the original enactment of Section 504 contains no references to architectural barriers. Prior to publishing its proposed rule to implement Section 504 with respect to HEW programs,

HEW solicited public comment on the following question:

"Whether § 504 prohibitions extend to architectural barriers, and, if so, whether the nondiscrimination requirements apply to both new and existing buildings used in connection with federally assisted program or activities" (41 FR 20296 (May 17, 1976)).

After consideration of public comments, HEW answered both questions affirmatively, stating:

Most of the comments agreed that the protection of section 504 did, in fact, extend to the concept of architectural barriers and that the proposed regulation should apply to both new and existing buildings. The proposed regulation adopts the position that section 504 deals with the issue of accessibility of buildings, whether new or existing, because the existence of architectural barriers operates to exclude handicapped persons from the federally assisted programs and services held within them. (41 FR 29555 (July 16, 1976)).

The current DOJ Implementation Regulation sets forth program accessibility requirements dealing with architectural barriers which are consistent in approach with those proposed by HEW in 1976 and adopted by it in 1977 for application to HEW program recipients, and are in substantially the form adopted by HEW in 1976 for application to programs of all agencies.

The basis of HEW's conclusions regarding the scope of Section 504's application to architectural barriers is not stated in its rulemaking actions other than as set forth above. Considered in the light of the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent Court of Appeals decision in *American Public Transit Association v. Lewis*, 655 F.2d 1271 (D.C. Cir. 1981), the breadth of the conclusions reached by HEW appears questionable. In particular, the Department believes that HEW did not give sufficient consideration to the fact that Congress had already legislated expressly in the area through the Architectural Barriers Act of 1968 and gave no indication of an intent to override the specific provisions and limitations of that enactment through the general prohibitions of Section 504.

Southeastern Community College did not deal with program accessibility requirements in the context of architectural barriers. The principal issue in the case was whether the plaintiff, who suffered from a hearing disability, was an "otherwise qualified handicapped individual" for a training program for registered nurses. The Court

concluded that the individual was not "qualified" but then went further to consider whether the recipient of Federal assistance was obligated to undertake affirmative action through program modifications that would overcome the effects of the disqualifying handicap. In this context, the Supreme Court held that "neither the language, purpose, nor history of Section 504 reveals an intent to impose an affirmative action obligation on all recipients of federal funds" (442 U.S. at 411). In reaching this conclusion, the Court noted that "[t]he language and structure of Rehabilitation Act of 1973 reflect a recognition by Congress of the distinction between the even-handed treatment of qualified handicapped persons and affirmative efforts to overcome the disabilities caused by handicap," (id. at 410), relying heavily on evidence that "demonstrated that Congress understood accommodation of the needs of handicapped individuals may require affirmative action and knew how to provide for it in those instances where it wished to do so" (Id.).

In *Southeastern Community College*, the comparisons which the Court made were to other provisions of the Rehabilitation Act itself, particularly Section 501(b), requiring affirmative action in employment by Federal agencies, and Section 503(a), which requires affirmative action in hiring by Federal contractors. Similarly, the Department believes that, in interpreting the intended scope of Section 504 with respect to architectural barriers, it cannot ignore Congress' express resolution on that subject as embodied in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.). The appropriateness of this comparison is strengthened by the fact that, while the Architectural Barriers Act was enacted in 1968, Congress further legislated in relation to it in Section 502 of the Rehabilitation Act of 1973 (creating the Architectural and Transportation Barriers Compliance Board) without revising in any manner the provisions and scope of the Architectural Barriers Act itself.

Of particular importance in the context of the Department's consideration of the scope of Section 504 as it may relate to architectural barriers in residential structures assisted under HUD programs is the Architectural Barriers Act's express exclusion of "privately owned residential structure[s] not leased by the Government for subsidized housing programs" (42 U.S.C. 4151). In addition, the requirements of the Architectural Barriers Act affect

existing buildings only when they are altered, without requiring that alterations be undertaken solely for the purpose of achieving accessibility (42 U.S.C. 4155). In adopting compliance standards the Department determines either are required by Section 504 as a matter of statutory construction or are reasonably related to the purposes of Section 504 while consistent with achievement of the objectives of the program statute authorizing the Federal financial assistance, the Department is compelled to reach a resolution which does not render these specific expressions of Congressional intent a nullity.

At the same time, the Department is also aware of the Supreme Court's warning that "the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons" is not always clear, and that "situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory" (442 U.S. at 412-413). Subsequent decisions, while not defining the limits of the obligation, have confirmed that Section 504 requires at least "modest, affirmative steps to accommodate handicapped persons." *American Public Transit Association v. Lewis*, 655 F. 2d 1271, 1278 (D.C. Cir. 1981); see *Dopico v. Goldschmidt*, 687 F. 2d 844 (2d Cir. 1982); *New Mexico Association for Retarded Citizens v. State of New Mexico*, 678 F. 2d 847 (10th Cir. 1982). But the question of how much accommodation is called for "is purely economic and administrative. . . . [I]t turns more on considerations of practicality than on matters of entitlement, merit, and restitution. And, while it is bounded, after *Davis*, by a general proscription against massive expenditures, the question is one of the degree of effort necessary rather than whether any effort at all is required." *Dopico*, supra, at 853.

With this guidance in mind, the Department believes that failure to prescribe accessibility requirements in newly constructed or substantially rehabilitated Federally assisted housing, including privately-owned structures, would cross the line and be unreasonable and discriminatory in a manner prohibited by Section 504. The incremental additional cost involved in meeting accessibility standards for buildings or individual units in new construction, or rehabilitation substantial enough to be equivalent to new construction, is slight.

The interim rule provides, therefore, that newly constructed Federally assisted multifamily housing projects

must meet accessibility standards as to exits, entrances, and other areas affecting facility accessibility. The same requirement is applicable when alterations are performed if the project contains 25 or more units and if the cost of alterations is 75% or more of the replacement cost of the completed project. If the foregoing qualification does not apply, alterations performed to common areas or to parts of facilities that affect accessibility are required to be accomplished, to the extent feasible, in compliance with accessibility standards. The foregoing requirements apply to all Federally assisted multifamily housing, except that construction or alteration of public housing to which accessibility standards promulgated pursuant to the Architectural Barriers Act are applicable are governed by those standards.

The requirements mentioned above relate to facility accessibility. Accessibility of individual dwelling units within multifamily housing projects is a separate subject. Standards published to date under the Architectural Barriers Act do not address the subject of the number of units required or recommended to be accessible, nor does the current edition of the American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI A 117.1-1980). (The Minimum Guidelines and Requirements for Accessible Design issued recently by the Architectural and Transportation Barriers Compliance Board (47 FR 33862, to be codified at 36 CFR Part 1190) adopted scoping provisions for common areas, and it is expected that scoping provisions regarding the number of dwelling units required to be made accessible for Architectural Barriers Act compliance will be included in uniform accessibility standards to be issued by the standard-setting agencies under that Act, including HUD.) The Department's proposed rule also did not attempt to prescribe a minimum number or percentage of units required to be made accessible, except only for a requirement that in a multifamily rehabilitation assisted by Community Development Block Grant funds, at least 2 percent of the units affected by the rehabilitation should be "barrier-free." However, requirements of minimum amounts of accessible units have been adopted by the Department under particular programs. Since 1970, HUD has required generally that 10 percent of the units in all new projects for the elderly be made accessible to persons in

wheelchairs. (This policy was modified in 1982, as noted below.) In 1977, the Department adopted a policy of requiring that not less than 5 percent of the units in non-elderly Section 8 projects be designed for and accessible to the physically handicapped; this policy is a current regulatory requirement, "where practicable", of the Section 8 new construction and substantial rehabilitation programs (24 CFR 880.202(f), 881.202(e)).

Several commentors on the proposed rule suggested a need for concrete percentage requirements for accessible units. In view of the criticisms contained in the General Accounting Office report referred to above, the Department considered making the number of accessible units required to be included in any project dependent entirely upon a prior assessment of the need for accessible units within a housing market area. The Department believes that, theoretically at least, such a requirement would fully satisfy the requirements of Section 504. On this basis, the requirement for 10 percent of the units in all new projects for the elderly was made more flexible in 1982, when sponsors of Section 202 elderly projects were advised to base the number of accessible units included in project proposals on a determination of need, to be reviewed by HUD taking into consideration the number of accessible units already existing and those which will be coming on the market in projects where architectural plans are already approved. However, on further consideration, the Department has concluded that, given the general unavailability of reliable data upon which such an assessment could be made which would be free of dispute, subjecting all housing proposals to prior completion of such a questionable assessment would unduly burden the administration of the programs.

Accordingly, the Department has elected to prescribe a fixed requirement that a minimum of 5% of the units in any newly constructed multifamily project containing 15 or more units including a public housing project meet accessibility standards, and that an additional 2% of units in any such project be accessible to persons with hearing or vision impairment (§ 8.22). The same requirement is applicable where alterations are undertaken to a project containing 25 or more units if the cost of alterations is 75% or more of the replacement cost of the completed project. In adopting the latter qualifications for accessibility requirements where alterations are concerned, the Department has sought

to balance the need for accessible units against the structural restrictions and resulting financial impact on rehabilitation projects.

In view of the possibility noted by the GAO report that an oversupply of accessible units may exist in some areas as well as the contrary possibility that an undersupply may exist in other areas, the interim rule permits variances from the 5 percent minimum requirement. A sponsor or developer of a multifamily project may request a waiver of the 5% minimum upon demonstrating to the reasonable satisfaction of the Department, based on available current data, such as census data or a currently effective Housing Assistance Plan, that provision of accessible units in a project to the extent required by the minimum percentage requirements would exceed the need for such units in the housing market area. In addition, HUD may prescribe lower percentages for any housing market area based upon its determination that a sufficient number of accessible units are available to meet expected needs in such area. In addition to current available data of the type mentioned above, this determination may be based upon evidence that accessible units in the area are being occupied by persons not having the disabilities or impairments requiring the accessibility features of the units, provided that HUD further determines that reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons in the area. In reviewing a request by a sponsor or developer or in considering a reduction of requirements for an area, HUD must consult with organizations serving handicapped persons and may, in its discretion, consult with State and local governments. The interim rule also provides that HUD may prescribe higher percentages for an area upon request therefor by any State or local government or agency thereof based upon a demonstration of need or in response to evidence of such a need received in any other manner, except that in no case (other than group homes or independent living complexes for the handicapped) will more than 15% of the units in any project be required to be accessible to persons with mobility impairments. In determining whether an increase in the minimum requirements is appropriate in any area, HUD is required to take into account the expected needs of eligible non-handicapped persons.

In other cases where alterations are performed to privately owned Federally assisted multifamily projects, alterations

are required to be accomplished in a manner consistent with achieving accessibility to the extent feasible, but in no such case are alterations required to be undertaken solely for the purpose of making units accessible. In this context, "feasibility" includes both structural and financial feasibility. As a definition of "structural feasibility", the Department has adopted one facet of the ATBCB's definition of "structural impracticability", viz., having little likelihood of being accomplished without removing or altering a load-bearing structural member (47 FR 33866, to be codified at 38 CFR 1190.3). However, the Department believes that the financial criterion adopted by the ATBCB, viz., an increased cost of 50 percent or more of the value of the element of the building or facility involved, while appropriate in an Architectural Barriers Act context where Federal financial assistance is assured to be a funding source for the alterations, is less appropriate where an alteration may be undertaken without Federal assistance or where cost limitations of a program under which rehabilitation assistance is provided may preclude cost additions of less than 50%. Accordingly, the interim rule provides that financial feasibility shall take into account the degree to which the alterations are funded by Federal financial assistance, the cost limitations (including unit cost limits) of the program under which such assistance is provided, and the relative cost of accomplishing such alterations in a manner either consistent or inconsistent with accessibility whether or not the alteration work is assisted with Federal financial assistance.

In the case of individual dwelling units, alterations are required to the extent feasible, to be accomplished in compliance with accessibility standards if, as a result of such alterations, the unit can be made accessible for persons of identifiable types or degrees of disability or impairment. For example, alterations are not required to be made in accordance with standards for accessibility to persons with mobility impairments if the unit is not located on a route accessible to such persons and alterations are not also being performed to the route. Unit alterations cease to be subject to the foregoing requirement with respect to standards for accessibility to mobility-impaired persons when 15% of the units in a project are accessible to such persons.

As indicated above, while alterations to privately owned residential structures are generally subject to requirements of consistency with achieving accessibility

within feasibility limitations, in no case are alterations required to be undertaken by a private owner solely for the purpose of making units accessible. This, however, is not the case in public housing, in which the Department believes that different requirements are appropriate in view of the differentiation made by Congress itself in the Architectural Barriers Act. The Department also considers it appropriate to take into account the fact that, by and large, alterations of public housing projects are funded entirely by funds provided by the Department for a modernization program to be funded under the Comprehensive Improvement Assistance Program. Section 8.24(c) of the interim rule prescribes the extent to which units in public housing projects governed by a modernization project must be made accessible. The Public Housing Authority (PHA) is required to assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such need has not been met or cannot reasonably be expected to be met in the proximate future through development, alterations otherwise contemplated by such modernization project or other modernization projects, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing). If the PHA currently has no accessible units or if information regarding availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified handicapped persons on the PHA's waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall be required to include the needs of eligible qualified handicapped persons in the PHA's jurisdiction. If the PHA determines, on the basis of such assessment, that alterations to make additional units accessible must be included in its modernization program in order that the needs of handicapped individuals who are current tenants or applicants on its waiting list may be accommodated proportionately to the needs of non-handicapped individuals in the same categories, then the PHA shall provide in its modernization project for such structurally feasible alterations complying with applicable accessibility standards as may be required to achieve such objective (provided, however, that the PHA shall not be required to make more than five percent of the units covered by any modernization project accessible). If the alterations required to make additional units accessible

pursuant to the foregoing would result in the modernization project being determined not to be financially feasible as defined in the modernization program regulation (i.e., the cost of the modernization program (excluding the cost of management improvements) would exceed the prototype cost of a new project), the PHA may request a waiver of the financial feasibility standard to such extent or of the requirement to make additional units accessible. The foregoing requirements are consistent with current administrative requirements of the modernization program.

Section 8.25 of the interim rule applies the "most integrated setting" concept of § 8.4(d), as well as the prohibition of § 8.4(b)(vii) against limiting the enjoyment of opportunities by a qualified handicapped person solely on the basis of handicap, to the housing context. It requires, to the extent feasible and subject to reasonable health and safety requirements, that accessible dwelling units be distributed throughout projects and sites and be available in a sufficient range of sizes and amenities so that a qualified handicapped person's choice of living arrangements is generally comparable to that of other persons eligible for housing assistance under the same program. It adds, however, that provision of an elevator in a multifamily project shall not be required solely for the purpose of permitting location of accessible units above or below the accessible grade level.

Section 8.26, governing occupancy of accessible units, is designed to remedy the shortcomings noted by GAO in the matching of accessible units with qualified handicapped persons needing them. It requires owners and managers having accessible units to adopt suitable means to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons and to take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible qualified handicapped persons whose disability requires the accessibility features of the particular unit. To the extent necessary or appropriate to achieve this objective in the individual circumstances of the project, when an accessible unit becomes vacant, the owner or manager, before offering such unit to the applicant at the head of the waiting list, may offer such unit to (i) current occupants of other units of the same project, or comparable projects under common control, having disabilities or impairments requiring the accessibility

features of the vacant unit and occupying units not having such features, or (ii) an eligible qualified applicant on the waiting list having disabilities or impairments requiring the accessibility features of the vacant unit, provided that such preference is not likely to delay unreasonably the availability of a unit for the applicant at the head of the waiting list. When offering an accessible unit to an applicant not having disabilities or impairments requiring the accessibility features of the unit, the owner or manager may require such applicant to agree (and may incorporate such agreement in the lease) to move to a nonaccessible unit when available. If reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons, an owner or manager is not required to hold an accessible unit vacant for longer than normal period in order to locate an eligible qualified handicapped person having disabilities or impairments requiring the accessibility features of the vacant unit. The Department believes that holding an accessible unit vacant for a longer than normal period would be unfair to non-handicapped applicants and inconsistent with Section 504's objective of even-handed treatment.

Section 8.27 governs the Section 8 Existing Housing program. The treatment of this program was among the most controversial aspects of the proposed rule. Commentors pointed out that this program is one of the most flexible, and potentially one of the most useful programs for integrating handicapped people into the community. Some 20 commentors directly criticized the outreach requirement of the proposed rule as weak or superfluous because they may not be existing accessible units in a particular community, PHAs will often lack the resources to fulfill this requirement, and under the proposed rule, owners whose sole source of Federal financial assistance was as recipients under the Section 8 Existing Housing Program would have been classified as small providers and not required to provide accessible housing.

The Department believes that, because of the nature of the Section 8 Existing Housing Program, requiring recipients—either handicapped certificate holders or building owners—to make alterations for accessibility would be ineffective and unenforceable, and would substantially reduce private-owner participation in this program. The Department also continues to believe that outreach efforts on the part of

public housing agencies to locate both qualified handicapped persons and accessible units is the most important component of program accessibility for the Section 8 Existing Housing Program. Accordingly, these provisions have been expanded in the interim rule. The Department also points out that owners participating in the Section 8 Existing Housing Program are "recipients" subject to the nondiscrimination requirements of Subpart A of the interim rule.

Section 8.28 consolidates the requirements in the proposed rule regarding homeownership programs which include Sections 235 and 235(j), Turnkey III and Indian Mutual Self-Help programs. The largest number of the comments received on this issue objected to the provision that the cost of making a home accessible may be passed on to the prospective homebuyer. Of particular concern was the likelihood that added costs would have to be paid by the homebuyer up front rather than amortized over the life of the mortgage. This would occur where additional costs put the total cost over allowable mortgage limits. The Department is without statutory authority to absorb additional costs over mortgage limits, except to the extent that an increase (up to 10%) may be granted pursuant to the authority granted under Section 235(p) (added by Section 206(a)(4) of the Housing and Community Development Act of 1980).

Several commentors objected to placing the responsibility on the handicapped person to work with the developer to determine which modification he or she would require. The Department believes that an individual homebuyer should have the opportunity to have his or her individual dwelling constructed as he or she wishes. Accessibility standards of § 8.30 will apply only to those accessibility features selected by the homebuyer.

Section 8.29 provides that if historic facilities become subject to alterations to which Part 8 applies and the provision of accessibility would substantially impair the historical or architectural integrity of the property, comments of the Advisory Council on Historic Preservation shall be obtained when required by Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and 36 CFR Part 800 prior to commencement of alterations. Accessibility to the historic facility subject to alterations need not be provided if such accessibility would substantially impair the historic features of the property or result in undue financial or administrative burden. A

substantial impairment of the historical or architectural integrity of an historic facility constitutes a fundamental alteration in the program and is not required in light of the *Davis* opinion.

Section 8.30 prescribes the standards for facility accessibility or dwelling unit accessibility which are to be complied with when applicable. It provides that standards for accessibility for housing facilities or units to which HUD's Minimum Property Standards are applicable shall be those set forth in the American National Standards Institute ANSI A117.1-1980, Specifications for Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons, subject to any conflict with a specific provision of the Minimum Property Standards, in which case the latter will govern. Standards for non-housing accessibility and for housing to which the Minimum Property Standards are not applicable will be the ANSI standard. Upon issuance of Uniform Federal Accessibility Standards by the standard-setting agencies under the Architectural Barriers Act, the Department will consider the extent to which those standards should be adopted for Section 504 compliance purposes.

Paragraph (b) of § 8.30 provides that the requirements of Subpart C relating to new construction shall be applicable to projects for which proposals or applications are submitted after the effective date of the regulations. Requirements relating to alterations are applicable to alterations for which proposals or applications are submitted after the effective date of the rule or, in the case of alterations which are not performed with Federal financial assistance, for which contracts are entered after such effective date. The Department notes that new construction or alterations to which Subpart C may not be applicable under this provision may still be subject to existing program requirements regarding accessibility.

Subpart D—Enforcement

The DOJ Implementation Regulation (and the predecessor HEW Implementation Guideline) requires each agency to establish an enforcement system for Section 504 and its implementing regulation which includes: (1) The enforcement and hearing procedures adopted for the enforcement of Title VI of the Civil Rights Act of 1964; (2) a requirement that recipients sign assurances of compliance with Section 504; and (3) a requirement that recipients (a) notify employees and beneficiaries of their rights under Section 504, (b) conduct self-evaluations of their compliance with Section 504

with the assistance of interested persons including handicapped persons and organizations representing handicapped persons, and (c) otherwise consult with these same individuals and organizations in achieving compliance with Section 504. In its proposed rule, HUD incorporated the sections pertinent to each of these requirements from HEW's Section 504 regulation covering HEW programs. In addition, recipients other than small providers were required to consult with interested persons including handicapped persons and organizations on at least an annual basis to assess compliance with the requirements of this part. Owners whose sole source of Federal financial assistance was as recipients under the Section 8 Existing Housing Program were exempted from the requirements for self-evaluation, consultation and notice.

The requirement of contractual assurances is important and indispensable as a means of assuring adequate compliance with the obligations imposed by Section 504 and by Part 8. The administrative enforcement scheme provided by Section 505 of the Rehabilitation Act, incorporating the enforcement scheme under Title VI, contemplates only termination of, or refusal to grant or to continue, assistance. This method of enforcement may be undesirable or inadequate in two frequent general contexts: when the burden of the funding termination will fall most heavily upon innocent program beneficiaries, or when the form of Federal financial assistance is an already-completed transfer or sale of real property or a one-time grant, leaving no continuing assistance to which the sanction can be applied.

Consequently, it has long been recognized that an important "other means authorized by law" (Section 602, Civil Rights Act of 1964 (42 U.S.C. 2000d-1)) for enforcement of civil rights obligations is a Government suit to enforce contractual assurances. See e.g., *U.S. v. Marion County School District*, 625 F. 2d 607 (5th Cir. 1980). The requirement for such assurances in any application for assistance and in grant agreements, cooperative agreements, and other contracts pursuant to which Federal financial assistance is extended by HUD is contained in § 8.50 of the interim rule.

Section 8.32 of the proposed rule would have imposed upon all recipients, other than owners receiving Section 8 Existing Housing assistance, certain requirements relating to evaluation by recipients of their compliance with Part

8. The details of the self-evaluation requirements were adopted from the HEW Section 504 regulation relating to HEW programs (now 45 CFR Part 84), which in turn adopted the concept from HEW's regulations implementing Title IX. The self-evaluation requirement does not have a precedent in Title VI regulation. In 45 CFR Part 84 and in Title IX regulations (see 45 CFR 86.3), the requirement is an integral part of provisions requiring remedial actions to overcome the effects of past discrimination or encouraging affirmative action in the absence of a finding of discrimination. As indicated elsewhere in this preamble, Section 504 has been held to be less susceptible to "affirmative action" requirements than may be appropriate under Title VI or Title IX. The Department also believes that the self-evaluation mechanism, while appropriate and feasible for institutional recipients of assistance of the type characteristic of HHS and other educational programs, is less so in the case of recipients under HUD programs who are principally private owners of real estate. Accordingly, the Department believes that the self-evaluation requirement is not necessary for effective enforcement of Section 504 obligations under HUD-assisted programs and has therefore deleted this requirement from the interim rule.

Section 8.51 requires that recipients notify participants, applicants, beneficiaries and employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in its programs or activities subject to Part 8.

For the remainder of its enforcement provisions, the proposed rule simply incorporated by reference the provisions of the Department's Title VI regulations at 24 CFR 1.6-1.12 and Part 2. In this interim rule, in order that attention may more easily be focused on such provisions in the context of Section 504 enforcement, the provisions are fully set out in §§ 8.52-8.56 of Subpart D and in Subpart E. The provisions are identical to the Title VI regulation with the following exceptions. Section 8.53(a) provides that the responsible Department official or designee shall from time to time review the practices of recipients to determine whether they are complying with this Part. This provision refers to the Department official to whom general responsibility for Section 504 enforcement is delegated. A provision has been added to the effect that, in addition, program administrators shall include in normal program

compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of Section 504 and Part 8.

Similar recognition of the fact that Section 504 objectives may be incorporated into program regulations appears in § 8.54(d). Paragraph (d) prescribes certain prerequisites to actions to effect compliance "by any other means authorized by law." This, too, refers to action by the Department official to whom general enforcement responsibility under Section 504 is delegated. The additional provision provides that this provision shall not be construed to prevent a program administrator from utilizing such procedures and sanctions established under such program as may be appropriate to assure or secure compliance with a specific requirement of such program designed to effectuate the objectives of Section 504 or Part 8.

In addition, a requirement of notice to the Governor of a State or chief executive officer of a unit of general local government following a determination of noncompliance in any program or activity funded in whole or in part with community development block grant assistance under Title I of the Housing and Community Development Act of 1974 has been added at § 8.54(d). This requirement is based on Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309).

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

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

based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The regulation allows recipients to adopt the least costly means of achieving compliance where existing facilities are inaccessible. In addition, employers are required to make accommodations for qualified handicapped persons only if those accommodations do not cause an undue economic hardship.

This rule was listed as item H-70-78 in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422, 48427) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 8

Administrative practice and procedure, Housing, Loan programs—housing and community development, Grant programs—housing and community development, Handicapped, Civil rights, Reporting and recordkeeping requirements, Equal employment opportunity.

Accordingly, 24 CFR Subtitle A is hereby amended by adding a new Part 8 thereto, reading as follows:

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subpart A—General Provisions

Sec.

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- 8.2 Applicability.
- 8.3 Definitions.
- 8.4 Discrimination prohibited.

Subpart B—Employment

- 8.10 General prohibitions against employment discrimination.
- 8.11 Reasonable accommodation.
- 8.12 Employment criteria.
- 8.13 Preemployment inquiries.
- 8.14 Exception States.

Subpart C—Program Accessibility

- 8.20 General requirements concerning program accessibility.
- 8.21 Non-housing facilities.
- 8.22 Housing facilities—new construction.
- 8.23 Housing facilities—alterations.
- 8.24 Public housing.
- 8.25 Distribution of accessible dwelling units.
- 8.26 Occupancy of accessible dwelling units.
- 8.27 Section 8 Existing Housing.

- Sec.
8.28 Homeownership programs (Sections 235 and 235(j), Turnkey III and Indian Mutual Self-Help Programs).
8.29 Historic facilities.
8.30 Standards; effective date of requirements.

Subpart D—Enforcement

- 8.50 Assurances required.
8.51 Notice.
8.52 Compliance information.
8.53 Conduct of investigations.
8.54 Procedure for effecting compliance.
8.55 Hearings.
8.56 Decisions and notices.

Subpart E—Practice and Procedure for Hearings

- 8.60 General information.
8.61 Appearance and practice.
8.62 Parties.
8.63 Form, execution, service and filing of documents.
8.64 Time.
8.65 Proceedings prior to hearing.
8.66 Responsibilities and duties of presiding officer.
8.67 Hearing procedures.
8.68 The record.
8.69 Posthearing procedures, decisions.
8.70 Judicial standards of practice.
8.71 Post-termination proceedings.
8.82 Definitions.

Appendix A—Federal financial assistance of the Department of Housing and Urban Development to which this part applies.

Appendix B—Statutory definitions of handicapped persons.

Authority: Sec. 7, 504, 505, Rehabilitation Act of 1973 as amended (29 U.S.C. 706, 794, 794a); Sec. 109 Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309); and Sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 8.1 Purpose.

(a) The purpose of this part is to effectuate Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), to the end that no otherwise qualified handicapped person in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, so be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This Part does not effectuate Section 504 as it applies to any program or activity conducted by the Department. Compliance with the requirements of this part does not assure compliance with requirements for accessibility by the physically-handicapped imposed pursuant to the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151 et seq.), where applicable.

(b) The policies and standards for compliance established by this part are

established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in Subparts D and E of this Part (including, without limitation, judicial enforcement pursuant to § 8.53(a) of this Part).

§ 8.2 Applicability.

This part applies to each program or activity that receives Federal financial assistance from HUD, including any program or activity assisted under the statutes listed in Appendix A of this part. The fact that certain financial assistance is not listed in Appendix A shall not mean that such financial assistance is not covered if Section 504 of the Act is otherwise applicable. Other statutes now in effect or hereafter enacted under which Federal financial assistance is extended by the Department may be added to Appendix A, or other changes therein may be made, by notice published in the *Federal Register*.

§ 8.3 Definitions.

As used in this part, the following terms have the following meanings:

"Accessible", when used with respect to a program or activity, means that such program or activity is conducted, delivered, or offered in such a way that qualified handicapped persons can benefit from and participate in the program or activity.

"Accessible", when used with respect to a facility or portion thereof other than an individual dwelling unit, means that such facility or portion thereof complies with the specifications and requirements of the applicable standards prescribed by § 8.30 of this Part and can be approached, entered, and used by physically handicapped persons. The phrase "accessible to and usable by" is used throughout this part as a synonym for accessible.

"Accessible", when used with respect to an individual dwelling unit, means that such unit is located on an accessible route and is constructed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30 of this Part, or is adaptable to meet such standards, so that such unit, as constructed or adapted, can be approached, entered, and used by a physically handicapped person who is disabled or has a hearing or vision impairment. "Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or facility which complies with the space and reach

requirements of applicable standards prescribed by § 8.30 of this Part; provided, however, that an accessible route which serves only accessible units for persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified handicapped person (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), such unit will be deemed accessible if it meets the requirements of applicable standards which address the particular disability or impairment of such person.

"Adaptable" means that certain elements of a dwelling unit, such as kitchen counters and sinks, are constructed so as to be able to be added to, raised, lowered, or otherwise altered, or walls are of sufficient strength to receive grab bars, so as to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a vision-impaired person the wiring for audible emergency alarms may be installed but the alarms themselves need not be installed until such time as the unit is made ready for occupancy by a vision-impaired person.

"Alteration" means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

"Applicant for assistance" means an individual or public or private entity which submits an application, request, plan, or statement required to be approved by or to be satisfactory to, a Department official or (in the case of a subgrantee) by a prospective recipient as a condition to becoming eligible for Federal financial assistance.

"Department" or "HUD" means the Department of Housing and Urban Development.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

"Federal financial assistance" includes: (1) Grants, loans, and advances of Federal funds, (2) the grant

or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale or lease of, or the permission to use (as other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced (i) for the purpose of assisting the recipient, or (ii) in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance or subsidy. In the case of Federal financial assistance described in clauses (2) and (4), the program or activity which receives Federal financial assistance shall be deemed to continue so long as the property is used for the purpose for which the Federal financial assistance is extended. The term "Federal financial assistance" does not include a procurement contract or payments pursuant thereto or a contract of insurance or guaranty.

Handicap means any condition or characteristic that renders a person as defined herein.

Handicapped person means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) "Has a record of such an impairment" means has a history of, or

has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means: (i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (1) of this definition but is treated by a recipient as having such an impairment.

"Multifamily project" means a project containing more than two dwelling units.

"Project" means the whole of one or more residential structures and appurtenant structures, equipment, roads, walls, and parking lots which are covered by a single contract for Federal financial assistance or application therefor, or are treated as such a whole for processing purposes, whether or not located on a common site.

"Qualified handicapped persons" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

(2) With respect to a program or activity other than employment, a handicapped person who meets the essential eligibility requirements for participation in such program or activity or for receipt of benefits therefrom except that the term does not include any individual whose current use of alcohol or drugs would constitute a direct threat to the property or safety of others. "Essential eligibility requirements" include stated eligibility requirements such as income or citizenship or alien status as well as implicit requirements inherent in the nature of the program or activity, such as that an occupant of multifamily housing be capable of independent living (except to the extent that necessary support services are contemplated to be provided in connection with the program or activity or will otherwise be available to such occupant) and of complying with all

obligations of occupancy, including the obligation to conduct himself or herself in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodation and will be conducive to maintaining the housing facility in a decent, safe and sanitary condition. For example, a chronically mentally ill person whose condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided but may not be "qualified" for a project lacking such services.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

"Responsible Department official" means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this part, any other Department official to whom authority has been delegated.

"Secretary" means the Secretary of Housing and Urban Development.

"Section 504" means Section 504 of the Rehabilitation Act of 1973, as amended (28 U.S.C. 794).

§ 8.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.

(b) *Specific Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or

service that is not equivalent to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons from that provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services to be equally effective are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different despite the existence of separate or different programs or activities designed specifically for the handicapped.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) that subject qualified handicapped persons to discrimination on the basis of handicap;

(ii) that defeat or substantially impair accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections:

(i) that exclude handicapped persons from, deny them the benefits of, or

otherwise subject them to discrimination under any program or activity that receives Federal financial assistance, or

(ii) that defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) Exceptions to this requirement may be approved by the responsible Department official if an applicant for assistance or a recipient can demonstrate that:

(i) there are no sites available in the community that are accessible or that can be made accessible to handicapped persons at a cost that will not render the facility financially infeasible; and

(ii) the alternative to compliance with this requirement would be nonparticipation in the program or activity receiving Federal financial assistance.

(c) Programs limited by Federal law:

(1) The exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons, or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons, is not prohibited by this part.

(2) Certain of the Department's programs operate under statutory definitions of "handicapped persons" which are more restrictive than § 8.3 (see Appendix B), and such definitions are not superseded or otherwise affected by this regulation.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

Subpart B—Employment

§ 8.10 General prohibitions against employment discrimination.

(a) No qualified handicapped person shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.

(b) A recipient may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring.

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 8.11 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons and (2) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, pursuant to paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's work force; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 8.12 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test or other selection criterion is shown to be job-related for the position in question; and (2) Alternative job-related tests or criteria that do not tend to screen out as many handicapped persons have not been shown by the responsible HUD official to be available.

(b) A recipient shall select and administer tests concerning employment to ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 8.13 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not make preemployment inquiry or conduct a preemployment medical examination of an applicant to determine whether the applicant is a handicapped person or the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is undertaking affirmative action efforts, voluntary or otherwise, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped; *Provided*, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the

information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of medical examination conducted prior to the employee's entrance on duty.

Provided, that: (1) All entering employees in that category of job classification must take such an examination regardless of whether or not they are handicapped; and (2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§ 8.14 Exception States.

Until such time as this section may be further amended, the provisions of this Subpart B shall be enforced in the States comprising the Second Circuit (Connecticut, New York, and Vermont), Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, and West Virginia), and Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), and Ninth Circuit (Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Hawaii) only with respect to programs or activities in which the provision of employment is a primary objective.

Subpart C—Program Accessibility

§ 8.20 General requirement concerning program accessibility.

Each program or activity that receives Federal financial assistance from the Department shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified handicapped persons.

§ 8.21 Non-housing facilities.

(a) No qualified handicapped person shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department because a recipient's facilities within which such program or activity is conducted, or where application for participation therein is made or the benefits distributable pursuant to such program or activity are distributed, are inaccessible to or unusable by handicapped persons.

(b) This section does not require that each of a recipient's facilities described in paragraph (a) of this section be accessible, or that every part of such facilities be accessible, so long as sufficient such facilities or parts thereof are accessible to make participation in such program and the benefits thereof readily available to qualified handicapped persons.

(c) This section does not require that the facilities described in paragraph (a) of this section maintained by every recipient must meet the requirements of paragraph (b) of this section if there are facilities of other recipients in the area pertinent to the same program or activity which meet the requirements of paragraph (b) of this section to a degree sufficient to make the program or activity, when viewed in its entirety, available for participation by qualified handicapped persons, and if compliance by the recipient through the means enumerated in paragraph (d) of this section would result in a fundamental alteration in the nature of its program or activity or in undue financial or administrative burden. In such event, however, a recipient whose facilities are inaccessible shall take reasonable steps to direct qualified handicapped persons to facilities of other recipients which are accessible and where participation in the program or activity by the qualified handicapped person may be achieved.

(d) A recipient may comply with the requirements of this section through such means as: (1) location of programs or services to accessible facilities or

accessible portions of facilities; (2) the addition or redesign of equipment (e.g., appliances or furnishings); (3) changes in management policies or procedures (e.g., establishing preferences for qualified handicapped persons on waiting lists for the program or activity at accessible facilities); (4) acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis; or (5) any other methods that result in making its program or activity accessible to handicapped persons.

(e) Construction or alterations of facilities described in paragraph (a) of this section to which standards issued pursuant to the Architectural Barriers Act are applicable shall be performed in accordance with such standards.

(f) Facilities described in paragraph (a) of this section to which paragraph (e) of this section is not applicable shall be constructed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30.

(g) Alterations of existing facilities described in paragraph (a) of this section to which paragraph (e) of this section is not applicable shall be performed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30 to the extent set forth herein. Alterations to which paragraph (e) of this section is not applicable performed to portions (including common areas) of existing facilities described in paragraph (a) of this section that affect participation by qualified handicapped persons in a program or activity conducted therein shall, to the extent feasible, be accomplished in a manner consistent with the standards prescribed in § 8.30.

(h) For the purposes of paragraph (g) of this section and §§ 8.23 and 8.24(c), "feasibility" shall include structural and financial feasibility. An alteration may be considered not structurally feasible when it has little likelihood of being accomplished without removing or altering a load-bearing structural member. Financial feasibility shall take into account the degree to which the alteration work is to be assisted with Federal financial assistance, the cost limitations (including unit cost limits) of the program under which such assistance is provided, and the relative cost of accomplishing such alterations in manners consistent and inconsistent with accessibility whether or not the alteration work is assisted with Federal financial assistance.

§ 8.22 Housing facilities—new construction.

(a) New construction of a multifamily project (including a public housing project as required by § 8.24) assisted by Federal financial assistance or covered by a contract for Federal financial assistance from the Department (including, in the case of a Section 8 project, an Agreement to Enter into a Housing Assistance Payments Contract) shall be performed in compliance with the specifications and requirements of the applicable standards prescribed in § 8.30. Subject to paragraphs (b) and (c) of this section, a minimum of five percent of the total dwelling units in a project containing not less than 15 dwelling units (but not less than one unit in any such project) shall be accessible for persons with mobility impairments and an additional two percent (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairment.

(b) Notwithstanding the provisions of paragraph (a) of this section, a sponsor or developer of a multifamily project otherwise subject to the requirements of paragraph (a) of this section may request a waiver of such requirements upon demonstrating to the reasonable satisfaction of HUD that provision of accessible units in such project to the extent otherwise required by paragraph (a) of this section would exceed the need for such units in the housing market area. Such demonstration shall be based on census data or other available current data (including a currently effective Housing Assistance Plan). In addition, HUD may prescribe lower percentages than those prescribed in paragraph (a) of this section for any housing market area based upon its determination that a sufficient number of accessible units are available in such area for the expected needs in such area. Such determination by HUD may be based upon evidence that accessible units in the area are being occupied by persons not having the disabilities or impairments requiring the accessibility features of the units, provided that HUD further determines that reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons in the area. In reviewing a request by a sponsor or developer or in considering a reduction of requirements for an area, HUD shall consult with organizations serving handicapped persons and may, in its discretion, consult with State and local governments.

(c) HUD may prescribe higher percentages than those prescribed in

paragraph (a) of this section for any area upon request therefor by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need therefor, based on census data or other available current data (including a currently effective Housing Assistance Plan), or in response to evidence of such a need received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible non-handicapped persons as well as the needs of qualified handicapped persons. Except for group homes or independent living complexes for handicapped persons, in no event shall more than 15 percent of the units in any project be required to be accessible to persons with mobility impairments.

§ 8.23 Housing facilities—alterations.

(a) Alterations of existing multifamily housing (other than public housing) assisted by Federal financial assistance or covered by a contract for Federal financial assistance from the Department (including an Agreement to Enter into Housing Assistance Payments Contract) shall be performed in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30 to the extent provided herein. If the facility contains 25 or more units and if the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, the provisions of § 8.22 shall apply. If the preceding sentence does not apply, there shall be no minimum number of units required to be made accessible. Alterations performed to common areas of facilities or parts of facilities that affect accessibility of the facility shall, to the extent feasible, be accomplished in compliance with the specifications and requirements of the applicable standards prescribed by § 8.30. Alterations to dwelling units shall, to the extent feasible, be accomplished in compliance with specifications and requirements of applicable standards prescribed by § 8.30 if, as a result of such alterations, the unit can be made accessible for persons of identifiable types or degrees of disability or impairment. However, alterations to units shall not be subject to the foregoing requirement with respect to standards for accessibility to persons with mobility impairments from and after such time as 15% of the units in a project are accessible to such persons.

(b) This section does not apply to an individual who borrows or receives

funds to rehabilitate a dwelling unit in which he or she resides or intends to reside.

§ 8.24 Public housing.

(a) Construction of any public housing project, whether or not constituting a "residential structure" as defined in 24 CFR 40.2, shall be performed in compliance with the standards applicable to residential structures pursuant to 24 CFR 40.4 and, in addition, shall be subject to the requirements of § 8.22 regarding accessible units.

(b) Alteration of any public housing project, whether or not constituting a "residential structure" as defined in 24 CFR 40.2, performed as part of a modernization program pursuant to 24 CFR Part 868 and which involves structural parts or building elements to which the standards made applicable pursuant to 24 CFR 40.4 are applicable shall be performed in accordance with such standards.

(c) Dwelling units in public housing projects covered by a modernization project pursuant to 24 CFR Part 868 shall be made accessible to the extent required by this paragraph. The PHA shall assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be expected to be met in the proximate future through development, alterations otherwise contemplated by such modernization project or other modernization projects, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing). (If the PHA currently has no accessible units or information regarding availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified handicapped persons on the PHA's waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall be required to include the needs of eligible qualified handicapped persons in the PHA's jurisdiction.) If the PHA determines, on the basis of such assessment, that alterations to make additional units accessible must be included in its modernization program in order that the needs of eligible qualified handicapped individuals who are current tenants or applicants on its waiting list may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall provide in its modernization project for such structurally feasible alterations complying with the specifications and requirements of applicable standards

prescribed by § 8.30 as may be required to achieve such objective (provided, however, that the PHA shall not be required to make more than five percent of the units covered by any modernization project accessible). If alterations required to make additional units accessible pursuant to the foregoing would result in the modernization project being determined not to be financially feasible (as defined in 24 CFR 868.3), the PHA may request a waiver of the financial feasibility standard to such extent or of the requirement to make additional units accessible otherwise made applicable by this section.

§ 8.25 Distribution of accessible dwelling units.

Accessible dwelling units required by §§ 8.22, 8.23(a), or 8.24 (a) or (c) shall, to the extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified handicapped person's choice of living arrangements is generally comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 8.26 Occupancy of accessible dwelling units.

Owners and managers of multifamily project having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible qualified handicapped persons whose disability requires the accessibility features of the particular unit. To the extent necessary or appropriate to achieve the foregoing objective in the individual circumstances of the project, when an accessible unit becomes vacant, the owner or manager, before offering such unit to the applicant at the head of the waiting list, may offer such unit to (a) current occupants of other units of the same project, or comparable projects under common control, having disabilities or impairments requiring the accessibility features of the vacant unit and occupying units not having such features or (b) an eligible qualified applicant on the waiting list having disabilities or impairments requiring the

accessibility features of the vacant unit, provided that such preference is not likely to delay unreasonably the availability of a unit for the applicant at the head of the waiting list. When offering such unit to an applicant not having disabilities or impairments requiring the accessibility features of the unit, the owner or manager may require such applicant to agree (and may incorporate such agreement in the lease) to move to a nonaccessible unit when available. If reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible qualified handicapped persons, an owner or manager shall not be required to hold an accessible unit vacant for a longer than normal period in order to locate an eligible qualified handicapped person having disabilities or impairments requiring the accessibility features of the vacant unit.

§ 8.27 Section 8 Existing Housing.

A PHA conducting a Section 8 Existing Housing program under 24 CFR Part 882 shall:

(a) In providing notice of the availability and nature of housing assistance for lower-income families pursuant to 24 CFR 882.207, adopt suitable means to assure that such notice reaches eligible qualified handicapped persons;

(b) In its activities to encourage participation by owners and others pursuant to § 882.208, include encouragement of participation by owners and having accessible units;

(c) Include a current listing of known available accessible units in the Certificate Holder's Packet distributed to qualified handicapped Certificate holders;

(d) Take into account the special problem of ability to locate an accessible unit when considering requests by qualified handicapped persons for extensions of Certificates pursuant to 24 CFR 882.209(d);

(e) If necessary in order that the needs of eligible qualified handicapped individuals on its waiting list may be met proportionally to the needs of eligible nonhandicapped individuals, request increases in contract rents for accessible units pursuant to 24 CFR 882.106.

§ 8.28 Homeownership programs (Sections 235 and 235(j), Turnkey III and Indian Mutual Self-Help Programs).

Any housing units newly constructed or rehabilitated for purchase by a prospective eligible qualified handicapped owner-occupant shall be

made accessible upon request of the prospective buyer if the nature of the handicap so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. When accessibility features selected at the option of the homebuyer features shall comply with the relevant standards. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his/her specific handicap. The cost of making a facility accessible pursuant to this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320.)

§ 8.29 Historic facilities.

If historic facilities (listed, or eligible to be listed, in the National Register of Historic Places, or facilities similarly listed pursuant to a State, county, or local statute) become subject to alterations to which this Part applies and the provisions of accessibility would substantially impair the historical or architectural integrity of the property, comments of the Advisory Council on Historic Preservation shall be obtained when required by Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and 36 CFR Part 800 prior to commencement of alterations. Accessibility to the historic facility subject to alterations need not be provided if such accessibility would substantially impair the historic features of the property or result in undue financial or administrative burden.

§ 8.30 Standards; effective date of requirements.

(a) Standards for accessibility for housing facilities or units to which HUD's Minimum Property Standards are applicable shall be those set forth in the American National Standards Institute ANSI A117.1-1980, Specifications for Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons, published by the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10008 (hereinafter "ANSI Standard"), except that in any case of conflict with a specific standard set forth or incorporated in the applicable Minimum Property Standards, the latter shall govern as long as ready access is provided. Standards for non-housing accessibility and for housing to which the Minimum Property Standards are

not applicable shall be the ANSI Standard.

(b) The requirement of this Subpart C relating to new construction shall be applicable to projects for which proposals or applications are submitted after [effective date of this Part]. The requirements of this Subpart C relating to alterations shall be applicable to all alterations for which proposals or applications are submitted after August 4, 1983 or, in the case of alterations not performed with Federal financial assistance, for which contracts are entered after August 4, 1983. For purposes of this paragraph, in the context of Community Development Block Grant programs not requiring applications, the final statement required to be submitted to the Department by the grantee shall be deemed an "application."

Subpart D—Enforcement

§ 8.50 Assurances required.

(a) *General.* Every application for Federal financial assistance from the Department submitted on or after August 4, 1983 under any program or activity which requires approval of applications on a project or similar basis shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by the assurance by the applicant that no qualified handicapped person shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under such program or activity, and such program or activity shall be operated and administered in compliance with all requirements imposed by or pursuant to this Part. Every grant agreement, cooperative agreement, or other contract pursuant to which Federal financial assistance from the Department is extended which is entered into or amended on or after August 4, 1983 shall contain an assurance by the grantee or other contracting party that no qualified handicapped person shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under the program of activity receiving Federal financial assistance, and such program of activity shall be operated and administered in compliance with all requirements imposed by or pursuant to this Part. The responsible Department official shall specify the form of the foregoing assurance for any covered program activity and the extent to which similar assurances (and the form thereof) shall

be required of subrecipients, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the Department a right to seek its judicial enforcement.

(b) *Duration of obligation.* In the case of an application, agreement or contract for Federal financial assistance in the form of a transfer of real property or an interest therein, or a sale or lease of real property or interest therein without consideration or at a nominal consideration, or at a consideration which is reduced (1) for the purpose of assisting the recipient or (2) in recognition of the public interest to be served by such sale or lease to the recipient, the assurance made pursuant to paragraph (a) of this section shall obligate the applicant, and the agreement or contract pursuant to which such Federal financial assistance is provided shall contain a similar assurance which shall obligate the recipient (including any successor, assignee, or transferee of the recipient), for the period during which the real property is used for the purpose for which Federal financial assistance is extended. In cases where the Federal financial assistance is provided on a continuing basis, the assurance shall obligate the applicant or recipient for the period during which Federal financial assistance is provided. In cases where the Federal financial assistance is provided on an advance or one-time basis, the assurance shall obligate the applicant or recipient for such period during which the program or activity benefits from receipt of such assistance as determined by the responsible Department official.

§ 8.51 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, applicants, beneficiaries, and employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in its programs or activities subject to this Part.

§ 8.52 Compliance information.

(a) *Cooperation and assistance.*

The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any program of Federal financial assistance subject to this Part shall to the fullest extent practicable seek the cooperation of

recipients in obtaining compliance with this Part and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his/her designee may determine to be necessary to enable him/her to ascertain whether the recipient has complied or is complying with this Part. In general, recipients should have available for the Department data showing the extent to which handicapped persons are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his/her designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this Part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or persons shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Part and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by Section 504 and this Part.

§ 8.53 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or designee shall from time to time review the practices of recipients to determine whether they are complying with this Part. In addition, each Department official who by law or delegation has principal responsibility within the Department for the administration of any program of Federal financial assistance subject to this Part shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and

monitor compliance with general or specific program requirements designed to effectuate the requirements of Section 504 and this Part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of persons to be subjected to discrimination prohibited by this Part may either personally or by a representative, file with the responsible Department official or designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible department official or designee.

(c) *Investigations.* The responsible Department official or designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this Part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this Part, the responsible Department official or designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 8.53(c).

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by Section 504 or this Part, or because he/she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this Part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 8.54 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this Part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking, and

(2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 8.50.* If an applicant or a recipient of assistance under a contract which is extended or amended on or after August 4, 1983 fails or refuses to furnish an assurance required under § 8.50 or otherwise fails or refuses to comply with the requirements imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceeding under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to an express finding, on the record, of noncompliance with this Part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) the responsible Department official has advised the applicant or recipient of his/her failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Part;

(3) the action has been approved by the Secretary; and

(4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report

of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.) has failed to comply with a requirement of Section 504 or this Part with respect to a program or activity funded in whole or in part with such assistance, he shall notify the Governor of such State or the chief executive officer of such unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. Such notice shall be given not less than 60 days prior to (1) an order suspending, terminating, or refusing to grant or continue Federal financial assistance becoming effective pursuant to paragraph (c) of this section, or (2) any action to effect compliance by any other means authorized by law taken pursuant to paragraph (c) of this section.

(e) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) the responsible Department official has determined that compliance cannot be secured by voluntary means;

(2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this Part and to take such corrective action as may be appropriate.

However, this paragraph shall not be construed to prevent a Department official who by law or delegation has principal responsibility within the Department for the administration of any program of Federal financial assistance subject to this Part from utilizing such procedures and sanctions established under such program as may be appropriate to assure or secure compliance with a specific requirement

of such program designed to effectuate the objectives of Section 504 or this Part.

§ 8.55 Hearings.

(a) *Opportunity for hearing.*

Whenever an opportunity for a hearing is required by § 8.54(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under § 8.54(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.*

Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his/her discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.*

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 and in accordance with subpart E of this Part relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant

or recipient shall be entitled to introduce all relevant evidence of the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the onset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may include irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this Part with respect to two or more programs or activities to which this Part applies, or noncompliance with this Part and the regulations of one or more other Federal departments or agencies issued under Section 504, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this Part. Final decisions in such cases insofar as this Part is concerned, shall be made in accordance with § 8.56.

§ 8.56 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his/her recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient requested. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within the period provided for in Subpart E of this Part, file with the responsible Department official

exceptions to the initial decision, with reasons thereof. In the absence of exceptions, the responsible Department official may on his/her own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he/she will review the decision. Upon the filing of such exceptions or of such notice of review and responsible Department official shall review the initial decision and issue his/her own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official, in which event a copy shall also be sent to the complainant.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he/she reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 8.55(a)(2), the decision of a hearing examiner or responsible Department official shall be based on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of a hearing examiner or responsible Department official shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the program or activity involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Section 504 and this Part, including provisions designed to assure that no Federal financial assistance will thereafter be extended for such program or activity to

the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Part, or to have otherwise failed to comply with this Part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Part.

(f) *Posttermination proceedings.* (1) Any applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this Part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he/she shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with the Practice and Procedure for Hearings issued by the Department (Subpart E). The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

(g) *Forms and instruction.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this Part are issued and promptly made available to interested persons.

(h) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency, responsibilities in connection with the effectuation of the purposes of Section 504 and this Part (other than

responsibility for final decision as provided in § 8.56), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Section 504 and this Part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action has been taken by the responsible official of this Department.

Subpart E—Practice and Procedure for Hearings

§ 8.60 General information.

(a) *Scope of rules.* The rules of procedure in this Subpart supplement Subpart D of this Part and govern the practice for hearings, decisions, and administrative review conducted by the Department of Housing and Urban Development, including each of its organizational units, pursuant to Section 504 of the Rehabilitation Act of 1973 (as amended) and this Part.

(b) *Records to be public.* All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights docket clerk during regular business hours. Inquiries may be addressed to the Civil Rights docket clerk, Department of Housing and Urban Development, Washington, D.C. 20410.

(c) *Use of number.* As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa.

(d) *Suspension of rules.* The responsible Department official with respect to pending matters may modify or waive any rule in this Subpart E upon his/her determination that no party will be unduly prejudiced and the ends of justice will thereby be served, and upon notice to all parties.

§ 8.61 Appearance and practice.

(a) *Appearance.* A party may appear in person or by counsel and participate fully in any proceeding. A State agency or any instrumentality thereof, a political subdivision of the State or instrumentality thereof, or a corporation may appear by any of its officers or employees duly authorized to appear on its behalf. Counsel must be members in

good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

(b) *Authority for representation.* Any individual acting in a representative capacity in any proceeding may be required to show his/her authority to act in such capacity.

(c) *Exclusion from hearing for misconduct.* Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 8.62 Parties.

(a) *Parties; General Counsel a party.*

(1) The term party shall include an applicant or recipient or other person with respect to whom a notice of hearing or opportunity for hearing has been served naming him/her as respondent. (2) The General Counsel of the Department of Housing and Urban Development shall be deemed a party to all proceedings.

(b) *Amici curiae.* (1) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference or, if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he/she finds that the petitioner has a legitimate interest in the proceedings, and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing. (2) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. Such brief shall be filed and served on each party within the time limits applicable to the party whose position he/she deems himself/herself to support; or if he/she does not deem himself/herself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings. (3) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The

presiding officer, in his/her discretion, may grant any such request if he/she believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

(c) *Complainants not parties.* A person submitting a complaint pursuant to § 8.53 of this Part is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae. In any event a complainant shall be advised of the time and place of the hearing.

§ 8.63 Form, execution, service and filing of documents.

(a) *Form of documents to be filed.* Documents to be filed under the rules of this Subpart E shall be dated, the original signed in ink, shall show the docket description and title of the proceeding and the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

(b) *Signature of documents.* The signature of a party, authorized officer, employee or attorney constitutes a certificate that he/she has read the document, that to the best of his/her knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

(c) *Filing and service.* All notices by the responsible Department official or the presiding officer, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to the responsible Department official or the presiding officer from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights docket clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8:45 a.m. to 5:15 p.m., e.s.t. or d.s.t., whichever is effective in

the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 8.69(f).

(d) *Service—how made.* Service shall be made by personal delivery of one copy of each person to be served or by registered or certified mail, return receipt requested, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed.

(e) *Date of service.* The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

(f) *Certificate of service.* The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his/her attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

§ 8.64 Time.

(a) *Computation.* In computing any period of time under the rules of this Subpart E or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Extension of time or postponement.* Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his/her decision, such requests should be addressed to him/her. Answers to such requests are permitted if made promptly.

(c) *Reduction of time to file documents.* For good cause, the responsible Department official with

respect to pending matters may reduce any time limit prescribed by the rules in this Subpart E except as provided by law or other express provisions in this Part 8.

§ 8.65 Proceedings prior to hearing.

(a) *Notice of hearing or opportunity for hearing.* Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to this part.

(b) *Answer to notice.* The respondent, applicant, or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case the answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

(c) *Amendment of notice or answer.* The General Counsel may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his/her answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his/her original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file an answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be longer, unless the presiding officer otherwise orders.

(d) *Request for hearing.* Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing, the respondent, either in the answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of all right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.

(e) *Consolidation.* The responsible Department official may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal

departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

(f) *Motions.* Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer. A repetitious motion will not be entertained.

(g) *Responses to motions and petitions.* Within 8 days after a written motion or petition is served, or such other period as the responsible Department official or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

(h) *Disposition of motions and petitions.* The responsible Department official or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting responses: *Provided, however,* that prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the presiding officer or the responsible Department official, respectively, not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral argument shall not be held on written motions or petitions unless the presiding officer in his/her discretion expressly so orders.

§ 8.66 Responsibilities and duties of presiding officer.

(a) *Who presides.* A presiding officer shall preside over all proceedings held under this Subpart E.

(b) *Designation of hearing examiner.* The designation of a hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record, including his/her recommended findings and proposed decision, to the responsible Department official, and may also fix the time and place of hearing. A copy of such designation shall be served on all

parties. After service of the designation of a hearing examiner to preside, and until such examiner makes the decision, motions and petitions shall be submitted to him/her. In the case of the death, illness, disqualification, or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his/her place.

(c) *Authority of presiding officer.* The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He/She shall have all powers necessary to these ends, including (but not limited to) the power to:

(1) Arrange and issue notice of the date, time and place of hearings or, upon due notice to the parties, change the date, time and place of hearings previously set.

(2) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him/her.

(6) Regulate the course of the hearing and the conduct of counsel therein.

(7) Examine witnesses and direct witnesses to testify.

(8) Receive, rule on, exclude, or limit evidence.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him/her.

(10) Issue initial or recommended decisions, or final decisions where the responsible Department official presides.

(11) Take any action authorized by the rules in this Subpart E or in conformance with the provisions of 5 U.S.C. 551-559 (the Administrative Procedure Act).

§ 8.67 Hearing procedures.

(a) *Statements of positions and trial briefs.* The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing, to submit trial briefs, and to participate in conferences to settle, simplify, or fix the issues in a proceeding.

(b) *Evidentiary purpose.* (1) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented

in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he/she intends to prove, may be made at hearings.

(2) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of this Part. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his/her failure timely to answer, or from his/her admissions or stipulations in the record, that there are no matters of material fact in dispute, the presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 8.69(a). Thereafter the proceedings shall go to conclusion in accordance with § 8.69 of this Part. The presiding officer may allow an appeal from such officer in accordance with paragraph (p) of this section.

(c) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his/her discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in paragraphs (e) and (f), of this section, witnesses shall be available at the hearing for cross-examination.

(d) *Exhibits.* Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

(e) *Affidavits.* An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and, not less than seven days prior to hearing, a party may file and serve written objection to any affidavit on the ground that he/she believes it necessary to test the truth of assertions therein at hearing. In such

event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

(f) *Dispositions.* Upon such terms as the presiding officer determines to be just, and for the convenience of the parties or of the Department, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

(g) *Admissions as to facts and documents.* Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him/her for any other purposes or be used against him/her in any other proceeding or action.

(h) *Evidence.* Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

(i) *Cross-examination.* A witness may be cross-examined on any matter material to the proceeding.

(j) *Un-sponsored written material.* Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not

deemed part of the evidence or record in the hearing.

(k) *Objections.* Objections to evidence shall be timely and briefly state the ground relied upon.

(l) *Exceptions to rulings of presiding officer unnecessary.* Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he/she desires the presiding officer to take, or his/her objection to an action taken, and his/her grounds therefor.

(m) *Official notice.* Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

(n) *Public document items.* Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

(o) *Offer or proof.* An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

(p) *Appeals from ruling of presiding officer.* Rulings of the presiding officer may not be appealed to the responsible Department official prior to consideration of the entire proceeding except with the consent of the presiding officer and where he/she certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expenses, or prejudice to any party, or substantial detriment to the public

interest. If an appeal is allowed, any party may file a brief with the responsible Department official within such period as the presiding officer directs. No oral argument will be heard unless the responsible Department official directs otherwise. At any time prior to submission of the proceeding for decision, the responsible Department official may direct the presiding officer to certify any question or the entire record to him/her for decision. Where the entire records so certified, the presiding officer shall recommend a decision.

§ 8.68 The record.

(a) *Official transcript.* The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

(b) *Record for decision.* The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

§ 8.69 Posthearing procedures, decisions.

(a) *Posthearing briefs: proposed findings and conclusions.*

(1) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law and, if permitted, reply briefs.

(2) Briefs should include a summary of the evidence relied upon, together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

(b) *Decisions following hearing.* When the time for submission of posthearing briefs has expired, the presiding officer, if the responsible Department official, shall make a final decision. If the presiding officer is a hearing examiner, he/she shall certify the entire record, including recommended findings and proposed decision, to the responsible Department official or, if so authorized, shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall

be served upon all parties, and amici, if any.

(c) *Exceptions to initial or recommended decisions.* Within 30 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the responsible Department official. Any other party may file a response thereto within 45 days after the mailing of the decision. Upon the filing of such exceptions, the responsible Department official shall review the decision and issue a decision thereon.

(d) *Final decisions.* (1) The responsible Department official shall make the final decision in all proceedings under this part after expiration of all applicable time limits provided in § 8.69(a) or § 8.69(c).

(2) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 30-day period specified in subparagraph (3) of this paragraph, such initial decision shall become the final decision of the responsible Department official upon his/her approval thereof and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of paragraph (c) of this section.

(3) Where the final decision of the responsible Department official does not provide for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance or the imposition of any other sanction, it is an "order" within the meaning of 5 U.S.C. 551(6) (formerly section 2(d) of the Administrative Procedure Act). When such final decision of the responsible Department official (other than the Secretary) does provide for suspension or termination of, or the refusal to grant or continue, Federal financial assistance or the imposition of any other sanction, such decision shall not constitute an "order" or "final agency action" until approved by the Secretary.

(4) All final decisions shall be promptly served on all parties, and amici, if any.

(e) *Oral argument to the responsible Department official.*

(1) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, or upon review on initiative of the responsible Department official, he/she shall make such request in writing. The responsible Department official may grant or deny such requests in his/her discretion. If granted, notice of oral argument will be served on all parties.

The Notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Civil Rights docket clerk not later than seven days before the date set for oral argument.

(2) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed.

Consolidation of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(3) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Civil Rights docket clerk at least seven days before the argument.

(f) *Service on amici curiae.* All briefs, exceptions, memoranda, requests, and decisions referred to in § 8.50 shall be served upon amici curiae at the same time and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 8.48(a) shall be served on amici.

§ 8.70 Judicial standards of practice.

(a) *Conduct.* Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his/her best efforts to restrain his/her client from improprieties in connection with a proceeding.

(b) *Improper conduct.* With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the responsible Department official by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his/her staff. It is improper that such interested persons or any members of the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer

having responsibility for a decision in the proceeding, or his/her staff. It is improper for any person to solicit communications to any such officer, or his/her staff, other than proper communications by parties or amici curiae.

(c) *Ex parte communications.* Only persons employed by or assigned to work with the responsible Department official who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the responsible Department official, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The responsible Department official, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons who are employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

(d) *Expeditious treatment.* Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

(e) *Matters not prohibited.* A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights docket clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by paragraph (c) of this section. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of § 8.55 of this Part are not prohibited.

(f) *Filing of ex parte communications.* A prohibited communication in writing received by the Secretary, the responsible Department official, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the

case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he/she considers the memorandum to be incorrect.

§ 8.71 Post-termination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that, since entry of the order, it has brought its program or activity into compliance with the requirements of Section 504 and this Part, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request, the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

§ 8.72 Definitions.

(a) The definitions contained in § 8.3 of this Part, to the extent applicable, apply to this subpart.

(b) The term "hearing examiner" is used in the sense in which it is used in 5 U.S.C. 3105 and 3344 (formerly sec. 11 of the Administrative Procedure Act).

(c) "Presiding officer," in any particular matter, may be the assigned hearing examiner or the responsible Department official.

Appendix A—Federal Financial Assistance of the Department of Housing and Urban Development to Which This Part Applies

(The Catalog of Federal Domestic Assistance number is shown in parenthesis after each program. Programs without a number are not listed in the Catalog of Federal Domestic Assistance as of the effective date of this interim rule.)

Community Planning and Development Programs

Community development block grant program. Title I of the Housing and Community Development Act of 1974, as amended; 42 U.S.C. 5301. (14.218)

Community development block grants/small cities program. Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301. (14.219)

Community development block grants/state's program. Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301. (14.228)

Community development block grants/Secretary's discretionary fund. Section 107 of the Housing and Community Development Act of 1974, as amended. (14.229)

Urban renewal programs. (Urban renewal projects and neighborhood development programs, code enforcement programs, demolition programs, rehabilitation grants, interim assistance grants, and community renewal programs.) Title I, Housing Act of 1949, as amended, 42 U.S.C. 1450.

Model Cities Program. Title I, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301.

Comprehensive planning assistance. Section 701, Housing Act of 1954, 40 U.S.C. 461. (14.203)

Rehabilitation loan program. Section 312, Housing Act of 1964, 42 U.S.C. 1452b. (14.220)

Urban Homesteading. Section 810 of the Housing and Community Development Act of 1974, 12 U.S.C. 1706e. (14.222)

Urban Development Action Grants. Section 19 of the Housing and Community Development Act of 1977, 42 U.S.C. 5301. (14.221)

Neighborhood Self-Help Development Program. Title VII, Housing and Community Development Act of 1978, 42 U.S.C. 8121. (14.800)

Livable Cities Program. Title VIII, Housing and Community Development Act of 1978, 42 U.S.C. 8141.

Loans and grants for new community development programs, (excluding assistance in the form of guarantees). Title VII, Housing and Urban

Development Act of 1970, 42 U.S.C. § 4511. (14.207)

Housing Programs

Lower-income housing assistance payments program. (Section 8.) Section 8, United States Housing Act of 1937 as amended 42 U.S.C. 1437f. (14.156)

Low-income public housing (including operating subsidies, modernization and Indian housing). United States Housing Act of 1937, 42 U.S.C. 1437. (14.146)

Public housing—Comprehensive Improvement Assistance Program (Public Housing Modernization). United States Housing Act of 1937, as amended, 42 U.S.C. 1430-1437. (14.158)

Operating assistance for troubled multifamily housing project (Troubled Projects Program (Flexible Subsidy)). Housing and Community Development Amendment of 1978, 12 U.S.C. 1715z-1. (14.164)

Public facilities liquidating programs. Title II of the Independent Offices Appropriations Act of 1955, Pub. L. 83-428, 12 U.S.C. 1701g-5.

Technical assistance to contractors or subcontractors. Section 911(b), Housing and Urban Development Act of 1970, 15 U.S.C. 694(a). Note.

Nonprofit sponsor assistance program. Section 106(b) of the Housing and Urban Development Act of 1968. (14.141)

Homeownership for lower income families, with assistance. Section 235(i), National Housing Act, 12 U.S.C. 1715z. (14.105)

Homes released from rehabilitation project mortgage, with assistance. Section 235(j) National Housing Act, 12 U.S.C. 1715z.

Rental and cooperative housing for lower income families. Section 236, National Housing Act, 12 U.S.C. 1715z-1. (14.103)

Direct loans for housing for the elderly or handicapped. Section 202, Housing Act of 1959, 12 U.S.C. 1701g. (14.157)

Assistance for Housing in Alaska, Section 1004 Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.

Technical assistance and interest subsidies to State housing finance and development agencies (Section 802). Section 802, Housing and Community Development Act of 1974, 42 U.S.C. 1440.

Emergency mortgage relief loan program. Section 106 of the Emergency Homeowner's Relief Act, 12 U.S.C. 2705.

Rent supplements. Section 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s. (14.149)

Counseling for homebuyers, homeowners and tenants. Section 106, Housing and Urban Development Act of 1968, as amended by Section 903(a),

Housing and Urban Development Act of 1970, 12 U.S.C. 1701x.

Low-income housing—homeownership opportunities for low-income families (turnkey III—mutual help for Indian areas). United States Housing Act of 1937, 42 U.S.C. 1401-1435.

Community services for tenants. Section 3, U.S. Housing Act of 1937, 42 U.S.C. 1437a.

Congregate Housing Services Program, Title IV, Housing and Community Development Act of 1978, 42 U.S.C. 8001. (14.170)

Surplus land for low and moderate income housing. Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b. (14. 211)

GNMA

Special assistance functions. Section 305, National Housing Act, 12 U.S.C. 1720, [including purchase of below market interest rate mortgages insured by FHA under section 221(d)(4), National Housing Act, 12 U.S.C. 1715L(d)(3), and the "Tandem" program, section 305(i) National Housing Act].

Policy Development and Research

Research and technology, (excluding contracts for procurement). Title V, Housing and Urban Development Act of 1970, 42 U.S.C. 1701z-1 [including the following current programs: Modular Integrated Utility System (MIUS), Tenant Management Program, Urban Observatory, and Urban Reinvestment Task Force]. (14.506)

Solar heating and cooling demonstration program. Solar Heating and Cooling Act of 1974, 42 U.S.C. 5501.

Fair Housing and Equal Opportunity

Fair housing assistance program. Title VIII of the Civil Rights Act of 1968; as amended, 42 U.S.C. 3601. (14.506)

Solar Energy and Energy Conservation Bank

Solar Energy and Energy Conservation Bank—financial assistance. Title V, Energy Security Act, 12 U.S.C. 3601-20.

Appendix B—Statutory Definitions of Handicapped Persons

The following programs operate under the statutory definition of handicapped person in Section 202(d)(4) of the Housing Act of 1959, as amended, 12 U.S.C. 1701q(d)(4): Homes released from rehabilitation project mortgage (Section 221(h), National Housing Act); Condominium units released from a Section 221(d)(3) mortgage (Section 221(i), National Housing Act); Housing for the Elderly or Handicapped (Section

202, Housing Act of 1959); and Rental and Cooperative Housing for Lower Income Persons (Section 236(j)(2)(B) and Section 236(j)(4), National Housing Act). This definition reads as follows:

The term "elderly or handicapped families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such a person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his/her ability to live independently; and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in Section 102(a)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, as amended.

The following programs operate under a definition of handicapped person found in Section 3(2), United States Housing Act of 1937, as amended: Low-Income Public Housing; and Section 8, U.S. Housing Act of 1937, Housing Assistance Payments Program. This definition reads as follows:

The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 223 of the Social Security Act or in section 102(a)(5) of the Developmental Disability Services and Facilities Construction Amendments of 1970, as amended, or is handicapped * * *. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions.

The two statutory definitions (i.e., section 202(d)(4) of the Housing Act of 1959 and section 3(2) of the U.S. Housing Act) are essentially the same except that the latter definition includes a person who "is under a disability as defined in section 223 of the Social Security Act" and the former does not; and section 202(b)(4) requires that the family (or his or her spouse) be elderly or handicapped, while section 3(2) does not make this distinction. The criteria for determining whether a person is handicapped are the same in both statutes: to have an impairment which (i) is expected to be of long-continued and indefinite duration; (ii) substantially

impedes his/her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions.

Dated: April 11, 1983.

Samuel R. Pierce, Jr.,
Secretary.

[FR Doc. 83-11951 Filed 5-5-83; 8:45 am]

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Federal Register

**Friday
May 6, 1983**

Part VIII

Environmental Protection Agency

**Category of Chemical Substances Known
as Chlorinated Naphthalenes Proposed
Determination of Significant New Uses;
Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50502/FRL 2306-6; TSH-FRL 2306-6]

Category of Chemical Substances Known as Chlorinated Naphthalenes Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a Significant New Use Rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), to require persons to notify EPA at least 90 days before manufacturing or importing chlorinated naphthalenes (CN's) for "significant new uses" as defined in the rule. The agency is concerned that chlorinated naphthalenes may present risks to human health if new uses occur.

DATES: Written comments should be submitted by July 5, 1983.

ADDRESS: Comments should bear the document number OPTS-50502 and should be addressed to: TSCA Publication Information Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Chris C. Tirpak, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-509, 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: Section 5(a)(2) of the Toxic Substances Control Act (TSCA) authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is generally subject to the same statutory requirements and procedures as a premanufacture notice (PMN) submitted under section 5(a)(1)(A). In particular, these include the information submission requirements of section 5(d)(1) and section 5(b), certain

exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f). Section 5(g) requires that if the Agency does not take action under section 5, 6, or 7 after receiving a SNUR notice, it must explain in the Federal Register its reasons for not taking action. Substances covered by proposed or final SNUR's are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707.

I. Substances Subject to Proposed SNUR—Chlorinated Naphthalenes

This proposed SNUR applies to the category of chemical substances known as chlorinated naphthalenes (CN's). The category of CN's includes all individual monochloronaphthalene through octachloronaphthalene isomers and mixtures of two or more chlorinated naphthalenes that are on the TSCA Inventory of Chemical Substances in Commerce. These substances are:

CN's LISTED ON THE TSCA INVENTORY OF CHEMICAL SUBSTANCES IN COMMERCE

CAS Registry Number	Chemical Substance
90-13-1	Naphthalene, 1-chloro-
91-58-7	Naphthalene, 2-chloro-
1321-64-8	Naphthalene, pentachloro-
1321-65-9	Naphthalene, trichloro-
1335-87-1	Naphthalene, hexachloro-
1335-88-2	Naphthalene, tetrachloro-
1825-30-5	Naphthalene, 1,5-dichloro-
1825-31-6	Naphthalene, 1,4-dichloro-
2050-69-3	Naphthalene, 1,2-dichloro-
2050-72-8	Naphthalene, 1,6-dichloro-
2050-73-9	Naphthalene, 1,7-dichloro-
2050-74-0	Naphthalene, 1,8-dichloro-
2050-75-1	Naphthalene, 2,3-dichloro-
2050-76-2	Naphthalene, 2,6-dichloro-
2198-75-6	Naphthalene, 1,3-dichloro-
2198-77-8	Naphthalene, 2,7-dichloro-
2234-13-1	Naphthalene, octachloro-
25586-43-0	Naphthalene, chloro-
32241-8-0	Naphthalene, heptachloro-

Manufacture or importation of CN's not on the Inventory requires submission of a premanufacture notice under section 5(a) of TSCA.

In this proposal, EPA is exercising the authority granted by section 26(c) of TSCA. Section 26(c) allows EPA to take action including proposing a SNUR with respect to a "group of chemical substances the members of which are similar in molecular structure * * *." All the chlorinated naphthalenes are similar in molecular structure since they consist of naphthalene, which is two fused benzene rings, where one or more of the eight hydrogen atoms is replaced with a chlorine atom.

II. Background

CN's have been used in a variety of applications including use in cable insulation, wood preservatives, automotive and other capacitors, engine

oils, and cutting and grinding fluids. In the 1920's, about 20 million pounds of CN's were produced annually, primarily for use in cable insulation. Between the 1930's and 1950's, CN's were used extensively in the manufacture of electrical insulation. In 1956, over 7 million pounds were manufactured domestically. Domestic manufacture of CN's decreased to 700,000 pounds in 1978 as CN's were replaced by a variety of substitutes and Chemisphere, the last domestic manufacturer of CN's discontinued production by 1980. However, CN's are still manufactured outside the United States and some CN's are imported into the United States. In 1980, 32,497 pounds of CN's were imported, while 34,062 pounds were imported in 1981. In 1981, about 15,000 to 20,000 pounds of CN's were used in refractive index testing oils, and most of the rest were used as capacitor dielectrics.

Under section 4(e) of TSCA, the Interagency Testing Committee in its second report recommended that the following tests be conducted for CN's: mutagenicity tests, teratogenicity tests, long-term carcinogenicity tests, environmental effects tests and chronic studies to evaluate the other effects of prolonged exposures (43 FR 16684, April 19, 1978). However, because CN's are no longer domestically manufactured and are imported only in limited volumes, EPA decided not to propose a section 4 test rule (46 FR 54482), November 2, 1981). Instead, EPA requested comments on several alternatives to testing. These included a SNUR, a section 8(a) reporting rule, and listing CN's under section 5(b)(4). Comments on alternatives to testing were received from the Natural Resources Defense Council (NRDC) and the Chemical Manufacturers Association (CMA). CMA suggested that CN's be considered for a section 8(a) reporting rule, while NRDC suggested that CN's be subject to a SNUR, a section 8(a) reporting rule and a rulemaking to list the chemical under section 5(b)(4).

EPA has decided to propose a SNUR for CN's. EPA is proposing to designate as significant new uses certain uses of CN's that are reasonably expected to result in different or increased exposures that have health or environmental significance. Through a SNUR, EPA will be able to assess risks resulting from a significant change or increase in human or environmental exposure to CN's before that exposure occurs.

III. Reasons for Proposing This Rule

A. EPA's Concerns for Health and Environmental Effects of CN's

EPA is primarily concerned about the potential for oncogenicity (the capacity to produce or from tumors) in humans exposed to CN's. EPA is also concerned about the potential for liver degeneration, hyperkeratosis (thickening of the skin), acute dermatitis, and other health effects in humans exposed to this class of chemicals.

EPA is also concerned about the potential ecological hazards resulting from exposure to CN's. All CN's have the potential to concentrate in living organisms and this potential increases with the degree of chlorination. Based on analogy to other chlorinated hydrocarbons, EPA believes that CN's have the potential to persist in the environment. They have been detected in plants, fish, and birds; thus, CN's may be transported through the aquatic food chain to fish-eating birds. CN's are also highly toxic to marine and freshwater algae, as well as aquatic and terrestrial invertebrates, and appear to be a cumulative toxin in these organisms.

Available test data on CN's are summarized in the following Unit IIIB. Based on the available health and environmental effect data on CN's and the structural similarity of the members of the category, EPA believes there is a reasonable basis for concern about the entire category of CN's. While some category members may present more or less concern for the effects identified, EPA does not believe there is adequate justification for distinguishing between individual category members in this proposal.

B. Summary of Test Data on CN's Available to EPA

Although there are no known human studies on oncogenic effects caused by the chloronaphthalenes, there are reports showing tissue changes in exposed animals which may indicate a tumorigenic response. In one study, a hyperplastic response was induced by a topical administration of chlorinated naphthalenes (Halowaxes 1000, 1014 and 1020) to the inner surface of rabbit ear skin (Ref. 36). At the end of a 3-week exposure period, moderate hyperplasia was observed, a severe response was evident at the end of the sixth week, and a subsidence of the activity was observed 2 weeks later. In this study, only a 4 percent solution of Halowax 1020 in Carbowax and 5 percent solution of Halowax 1014 in olive oil had a statistically significant difference from the increase produced by the vehicles alone when applied for 6 weeks.

There are also reports of metaplastic and hyperplastic changes in the reproductive systems of several animal species following exposure to chlorinated naphthalenes. Bell (Ref. 1) reported "some" cases of squamous metaplasia of the epididymis of calves (number unspecified) fed chlorinated naphthalenes. The doses, exposure periods, and specific substances fed were not reported. Bell (Ref. 2) reported squamous metaplasia of the epididymis and the ducts of the parotid gland in a calf orally administered a single dose of pentachloronaphthalene. The findings were reported at necropsy 57 days after administration. A Holstein bull fed a daily dose of a mixture of penta- and hexachloronaphthalenes (isomers unspecified) for a total of 1.8 g in a 52-day period, developed metaplasia of the head of the epididymis (Ref. 45). Experimentally induced metaplasia and keratinization of the lumen of the seminal vesicles in a Holstein calf fed "toxic" material for 30 days were also reported (Ref. 26). The toxic material was reported as highly chlorinated naphthalenes (unknown mixture and unspecified isomers) (Ref. 45). Dose-related increases of epithelial metaplasia of the testicular germinal epithelium were reported in calves fed food containing chlorinated naphthalenes (composition and isomers unspecified) (Ref. 30). Hyperplastic changes were also noted in the luminal surface of the vaginas of young pigs fed hexachloronaphthalene (isomers unspecified) (Ref. 20). The Agency believes these tissue changes are significant when considering the "hyperplasia to metaplasia to neoplasia" sequence often observed in oncogenesis.

Additional support for the Agency's oncogenic concern is based on the fact that a metabolite of chlorinated naphthalenes may be responsible for the metaplastic changes noted in these animal studies. Several metabolism studies suggested arene oxides as intermediates in the metabolism of some of the chlorinated naphthalenes to metabolites identified in sampled blood and urine (Refs. 32, 33, 34, 6, and 7). Other studies have shown arene oxides to occur in the metabolism of other chlorinated and non-chlorinated aromatics, and to be part of the oncogenic mechanism for these compounds (Refs. 19, 16, 36, and 5). Arene oxide intermediates in the metabolism of polynuclear aromatic hydrocarbons, polychlorinated biphenyls, and chlorinated benzenes were also shown to react readily with cellular macromolecules (Refs. 19 and 47). Consequently arene oxide

derivatives may be essential intermediate metabolites in the induction of oncogenesis, and possibly mutagenesis, by their parent compounds. Since chlorinated naphthalene metabolism may proceed via these intermediates, the chlorinated naphthalenes may be considered potentially oncogenic and mutagenic.

Another metabolic concern which has been associated with exposure to chlorinated naphthalenes and which may further support the Agency's oncogenic suspicions, is the vitamin A depression noted in exposed animals. For example, one study showed that high levels of vitamin A significantly decreased the incidence and degree of the hyperplasia induced by 20-methylcholanthrene in organ cultures of mouse prostates (Ref. 22). It has also been suggested that the synthesis of retinoids such as vitamin A, may maintain differentiated epithelia during oncogenic insult (Ref. 37). Vitamin A has also been reported to reduce the incidence of lung, urinary bladder, and breast cancer in experimental animals (Ref. 27). The depression of plasma vitamin A has been reported to precede other signs of hyperkeratosis, a commonly demonstrated effect in animals exposed to the chlorinated naphthalenes, and to extend at least a month beyond exposure to these chemicals (Ref. 31). The correlation between vitamin A depression and hyperkeratosis is speculative. However, the Agency believes that these observations suggest that the depletion of vitamin A levels may increase susceptibility to the oncogenic effect of the chlorinated naphthalenes.

Some human health effects commonly associated with exposure to some of the chlorinated naphthalenes are liver degeneration and chloracne. Chloracne is the most commonly reported health effect from subchronic exposure to CN's in humans. Several other health effects have also been reported in workers exposed for different lengths of time and seem to be linked with the higher chlorinated naphthalenes, penta through hexa (Refs. 11, 18, and 35); tetra through octa (Ref. 21). These other effects include acute yellow atrophy and necrosis of the liver, malaise, anorexia, vertigo, nausea, and jaundice (Refs. 9 and 21). Other observed human effects include perforating ulcers of the duodenum, varices of the esophagus, swollen gall bladder, gallstones, necrosis and fibrosis of the pancreas, parenchymatous degeneration of adrenal gland cells, and degeneration of the kidney tubules and glomeruli.

Information on various other health effects in animals shows that hyperkeratosis is the most often reported health effect in large animals, e.g., calves, subchronically exposed to the chlorinated naphthalenes. Frequently, excessive lacrimation and mucus production are also associated with the hyperkeratosis. Smaller animals, e.g., rats, exposed to the chlorinated naphthalenes generally developed fatty liver degeneration and fibrosis. In some instances, death resulted from liver degeneration in rabbits after exposure to large doses of trichloronaphthalene and tetrachloronaphthalene (Ref. 8).

Some acute effects noted in animals are mostly acute dermatitis (Refs. 3 and 18); lacrimation; excessive salivation, nasal discharge (Ref. 2); and liver fat increase (Ref. 13). Acute effects of the highly chlorinated naphthalenes seem to be related to the inability of animals to metabolize and excrete these compounds (Ref. 8).

Chlorinated naphthalenes also have been shown to affect the reproductive system of cattle and sheep by causing abnormal sperm production, making the animal sterile during the period of exposure. Once exposure decreases, the animals' fertility usually returns, indicating that the effect is reversible (Refs. 30 and 45). No followup studies have been done with the offspring from these animals. In female cattle, chlorinated naphthalenes have been linked to nonfecundity and natural abortion (Refs. 15 and 4).

EPA also believes that CN's may present potential ecological hazards because there is reason to expect that the chloronaphthalenes bioconcentrate and are transported through the food chain, causing adverse ecological effects. These characteristics are thought to be dependent upon the degree of chlorination.

Through the arithmetic process proposed by Hansch et al. (Ref. 25), various investigators have been able to calculate the octanol/water partition coefficients for the eight major chlorinated naphthalene isomers mono- through octa-chloronaphthalene. The coefficients of the chlorinated naphthalenes were found to increase with the degree of chlorination. Neely et al. (Ref. 28) reported that a high correlation also exists between this coefficient and bioconcentration in fish such that the higher the coefficient of a chemical, the greater the degree of bioconcentration. Therefore, the range of calculated coefficients for the chloronaphthalenes indicates that all of these compounds have a potential to bioconcentrate and that this potential

increases with the degree of chlorination.

Experimental studies have also reported bioconcentration factors of 25 to 140 for marine algae (Ref. 46) and higher factors, 63 to 257, have been measured for shrimp (Ref. 17) exposed to chloronaphthalene formulations containing 26, 56 and 62 percent chlorination. Bioconcentration factors for fish have not been measured, but are predicted to range from 230 for monochloronaphthalene to 850,000 for octachloronaphthalene based on their partitioning. Monitoring studies have detected chloronaphthalenes in plants, fish, and birds, and suggest that these chemicals have been transported through the aquatic food chain to fish eating birds.

Most of the chlorinated naphthalenes have been found not only to be highly toxic to marine and freshwater algae, but also to exhibit a high degree of cumulative toxicity indicating a high probability of causing chronic effects. This toxicity appears to decrease with increasing chlorination and demonstrates that the greater risk of environmental hazards is the result of the lower chlorinated naphthalenes. However, the higher chlorinated naphthalenes are believed to persist in the environment longer because they are metabolized more slowly.

Most of the plant toxicity data available for chloronaphthalenes are for marine and freshwater algae. One study (Ref. 46) exposed four species of saltwater algae and two bacillariophytes to three chloronaphthalene formulations. Toxicity of the chloronaphthalenes was found to decrease with increased chlorination for all species at every exposure concentration. Similar findings were reported by Craigie and Hutzinger (Ref. 10) using *T. fluviatilis*, *D. tertiolecta* and *Olisthodiscus* sp., and by EPA (Ref. 42) using *S. costatum* and *S. capricornutum*. The no observed effect concentrations reported by EPA (Ref. 42) for algae growth varied from less than $\mu\text{g/l}$ monochloronaphthalenes (22 percent Cl) to greater than 500,000 $\mu\text{g/l}$ octachloronaphthalene (70 percent Cl). These studies identify monochloronaphthalene as a cumulative toxin in aquatic plants and also indicate that the lesser chlorinated naphthalenes have a higher likelihood of causing chronic effects.

There is no information on the effects of polychloronaphthalenes to the long-term growth of terrestrial plants. Since polychloronaphthalenes have been identified as cumulative toxins in algae, it is likely that these substances are also cumulative toxins in terrestrial plants.

Supporting this assertion is a study where chloronaphthalenes were detected in apples (Ref. 14). The EPA believes this finding may indicate a potential for chronic effects in terrestrial plants.

The acute toxicity of chloronaphthalenes has been determined for three species of aquatic invertebrates: *D. magna* (Ref. 42); post-larval and adult glass shrimp, *P. pugio* (Ref. 17) and mysid shrimp, *M. bahia* (Ref. 42). Most of the chloronaphthalenes studied have been shown to be very toxic to this group of organisms, with EC_{50} values less than 500 $\mu\text{g/l}$. Acute toxicity no effect levels for *D. magna* and mysid shrimp have been reported to be less than 170 $\mu\text{g/l}$ for monochloronaphthalene.

Monochloronaphthalene, Halowax 1000, (26 percent Cl) and Halowax 1099 (52 percent Cl) have all shown cumulative toxicity to aquatic invertebrates (Ref. 17 and 42).

Acute toxicity also appears to be related to the degree of chlorination; toxicity increases with the higher chlorinated naphthalenes until a point is reached where it decreases rapidly. Studies by Green and Neff (Ref. 17) and EPA (Ref. 42) demonstrate decreasing EC_{50} values with increasing chlorination until the percent chlorine reaches about 52 to 56 and then a sharp increase in values between 57 and 69 percent chlorination.

Chlorinated naphthalenes have also been shown to be acutely toxic to the soil invertebrates (Ref. 40). Subchronic effects of Halowax 1099 on the horseshoe crab, *L. polyphemus*, and the mud crab, *R. harrisi*, have been studied by Neff and Giam (Ref. 29) and Laughlin et al. (Ref. 23). Halowax 1099 interfered with the larval development in *L. polyphemus*. Neff and Giam (Ref. 29) reported that Halowax 1099 was just as toxic to the horseshoe crab as the chlorinated biphenyl formulation. Aroclor 1066, which is 66 percent chlorinated.

Halowax 1099 was about three times more toxic than Halowax 1000 to the larvae of *R. harrisi*. Both Halowax formulations also interfered with larval development. The no effect concentrations for the measured effects were 50-100 $\mu\text{g/l}$ for Halowax 1099 and 150-300 $\mu\text{g/l}$ for Halowax 1000. These concentrations were nominal and are maximal estimates of no effect concentrations. As such, actual concentrations are lower because Laughlin et al. (Ref. 23) used a static test method with renewal every 24 hours and treatment concentrations decreased 70 to 80 percent between renewals.

Laughlin et al. (Ref. 23) also characterized these chlorinated naphthalenes as cumulative poisons. The report noted a 7-day lag time in the onset of mortality after the crab larvae were exposed to these chemicals.

The effect of sublethal concentrations of Halowax 1099 on the respiratory rates of juvenile mud crabs were also studied by Laughlin and Neff (Ref. 24). Mean respiratory rates of crabs were increased over control rates after only a 5-day exposure to 20 µg/l Halowax 1099 at three different salinities. The mean rate of exposed crabs given a hyposmotic shock, i.e., the lowest salinity, was significantly higher for animals at the two higher salinities. Laughlin and Neff concluded that the higher energetic cost of acclimation to transient reductions in salinity caused by low environmental concentrations of chloronaphthalenes would produce many indirect ecological effects to crab populations in exposed areas.

These data indicate that chloronaphthalenes can affect some aquatic invertebrates at concentrations lower than 20 µg/l, can interfere with their development, and are cumulative toxins at subchronic exposures. No studies on the chronic toxicity, i.e., whole life cycle studies, of chloronaphthalenes have been found for invertebrates.

The acute toxicity of monochloronaphthalene and octachloronaphthalene has been evaluated for the bluegill, *L. macrochirus*, and the sheepshead minnow, *C. variegatus*, using a static exposure method (Ref. 42). The 96-h EC₅₀ values for monochloronaphthalene were 2270 and 2360 µg/l for the bluegill and minnow, respectively. Octachloronaphthalene showed very low toxicity to these fish. The 96-h EC₅₀ value for *L. macrochirus* decreased from 3710 µg/l at 24 hours to 2270 µg/l at 48 hours and thereafter remained constant throughout the 96 hours. A similar pattern was observed for *C. variegatus* except that the acute toxicity disappeared at 72 hours. No effect concentrations of less than 780 and 1190 µg/l monochloronaphthalene were reported for *L. macrochirus* and *C. variegatus*, respectively.

The acute toxicity of monochloronaphthalene to frogs, *R. pipiens*, was studied by Sundstrom et al. (Ref. 38) through intraperitoneal injection. The 96-h LD₅₀ value was 900 mg/kg. The identified metabolite or monochloronaphthalene was 4-chloro-1-naphthol which was about four times more toxic to frogs. The LD₅₀ value was 245 mg/kg.

The subchronic effect of monochloronaphthalene on the early life stages, i.e., embryos and larvae, of the sheepshead minnow was examined in studies using a flow-through exposure method (Ref. 42). The maximum allowable toxicant concentration (MATC) was 390-790 µg/l. The no observed effect concentration is the lower MATC limit. No chronic studies, e.g., whole life cycles, are available for aquatic vertebrates for any of the chloronaphthalenes.

No toxicity studies for wild terrestrial vertebrates were available. Only laboratory and domesticated animals have been studied and these data were summarized in the health effects section.

C. Proposed Significant New Uses

EPA proposes to define the following as significant new uses of CN's:

- (1) Manufacture within the United States.
- (2) Import by any person of more than 100,000 pounds a calendar year.

A significant new use is defined after Agency consideration of all relevant factors, including those listed in section 5(a)(2) of TSCA.

For CN's, EPA is particularly concerned about significant increases in the overall volume of CN's processed and used each year. This is because CN's are very likely to concentrate in living organisms and persist. Therefore, EPA's definition of significant new use focuses on possible domestic manufacture or increased import of CN's. EPA believes that domestic manufacture or significantly increased import of CN's would reasonably be expected to result in different or increased exposures that have health or environmental significance. While EPA believes that these proposed definitions of significant new use are appropriate for CN's, they should not be viewed as a general policy for defining significant new uses in other SNUR's.

If a chemical substance has a high potential for toxicity, EPA believes that "significant new uses" can be defined broadly so that the Agency can review potential exposures and releases of concern and take regulatory action, if appropriate, before those exposures or releases occur. EPA recognizes that some broad definitions of significant new use may result in the Agency receiving a SNUR notice for an end use which may not result in a significant increase in exposure or release. The Agency believes that the submission of SNUR notices in such cases is preferable to defining significant new use narrowly for substances of high potential toxicity and possibly allowing significant exposures or release to occur

without notice to the Agency. However, EPA encourages public comment on possible ways to exclude from SNUR notice requirements any end uses that are unlikely to present increased exposure or release.

1. *General Rationale for the Significant New Use Definitions.* Today, there is relatively little exposure to CN's. Only about 30,000 pounds of CN's are processed annually and the largest percentage of that is for use in refractive index oil. Exposure to CN's in this use is limited, because CN's are used in small amounts during the preparation of slides for observation in crime and petrographic laboratories. The use of ventilation hoods in many laboratories also reduces exposure to CN's. Small amounts of CN's are also used in capacitors today. Workers and consumers can be exposed to CN's and there can be releases to the environment as a result of this use. However, exposure and release are limited somewhat by the small amount of CN's now processed for this use.

In the past, CN's were produced in high volumes and used in many applications that resulted in significant human exposure and environmental release. The Agency would be concerned if these end uses resumed or if CN's were again produced in high volume. CN's have been manufactured and processed domestically at volumes as high as about 20 million pounds annually. CN's have been used in many applications, including chemical resistant gauge fluids, instrument seals, heat exchange fluids, high boiling specialty solvents (mainly for laboratory use), color dispersants, additives for crankcase oils, feedstocks for dyes, dye carriers, wood preservatives, impregnation (saturation or coating) of condensers for electrical applications, temporary binders in the manufacture of ceramics, gear oil, cutting oils, flame proofing, refractive index testing oils, insulation of electrical cable and conductors, moisture-proof sealants, separators in batteries, masking compounds in electroplating, and grinding wheel lubricants. However, of the many uses, only a few have been important in terms of volume. These uses include cable insulation, wood preservation, engine oil additives, electroplating masking compounds, feedstocks for dye production, dye carriers, capacitors, and refractive index testing oils (Ref. 44).

Several of the past uses of CN's resulted in substantial exposure to workers, consumers, or the environment. For example, capacitors were impregnated by dipping the parts into an

open vat, allowing substantial opportunity for release of vapors and inhalation by workers. Average airborne concentrations of 1.0 to 7.6 mg/m³ were measured in a factor impregnating condensers (Ref. 12). Dermal exposure may also have occurred when coated parts were handled manually to encase the winding. Releases to the environment may have occurred from volatilization of heated CN's, due to dragout losses on coated parts, cleaning of process equipment, and disposal of rejected parts and other wastes. CN's were detected in the air (9.8-33 mg/m³) and water (0.6 µg/L) in the vicinity of one capacitor plant. Lower levels have been detected at other plants (Ref. 41). In addition, auto mechanics and consumers were frequently exposed dermally and via inhalation to CN's contained in engine oil and gear oil during changes of these fluids. Similarly, workers in the metalworking fluids industry were often exposed dermally and by inhalation to CN's contained in metalworking fluids during the machining of metal. In addition, use of CN's as feedstocks in the production of dyes for textiles could have resulted in exposure to workers during sampling and handling of the unreacted chloronaphthalene while handling the filter cake or waste material. The process using CN's as feedstocks in the production of dyes may have resulted in releases of potential concern including airborne emissions from reactor and condenser vents, the liquid waste streams, and bottoms from distillation equipment used to produce CN's.

In addition to the resumption of past uses, the Agency would be concerned about possible new end uses of CN's. EPA believes that the most likely possible new end uses of CN's are as an intermediate for polymers and as additive flame retardants in plastics. Use of CN's as an additive flame retardant could result in dermal exposure from the charging of flaked or granular CN into the mixer or extruder. In addition, in this use, the CN may be volatilized during the rolling or extruding operation, leading to some exposure by inhalation. Because of the many complicated factors that must be considered in identifying and predicting the likelihood of new end uses for CN's, this activity is speculative. Consequently, the Agency is hesitant to define specific end uses as significant new uses in this case because of the major health and environmental concerns associated with CN's.

Because present uses result in relatively limited exposure, EPA does not believe that CN's should be subject

to a test rule under section 4. However, if use of CN's increase, exposure is likely to increase. Increased use could result from a resumption of past end uses, increase in present uses or development of entirely new end uses. Similarly, if domestic manufacture occurs exposure could increase. If exposures increased, EPA would be concerned and believes it should have the opportunity to review possible increased exposures before they occur. Therefore, the Agency is proposing the definitions of significant new use listed above.

2. Rationale for Defining Manufacture in the United States as a Significant New Use. EPA proposes that domestic manufacture of CN's be considered a significant new use. Resumption of domestic manufacture would be a sign of significant market changes that are likely to be indicative of changes or increases in existing end uses and exposures. It could also indicate new end uses or a resumption of past end uses. EPA estimates that domestic manufacture may not be economical when demand is less than 100,000 pounds per year because of the high costs of producing the substances at low volume. Therefore, any resumption of domestic manufacture would likely indicate a major expansion of current end uses, a revival of former end uses, or the development of new end uses for CN's. This would be significant because it would increase the opportunity for exposure and release of CN's.

In addition, domestic production itself could increase total human and environmental exposure. Past monitoring around CN manufacturing facilities has detected the presence of CN's in air and water. Averaged over 24 hours, concentrations of up to 1600 mg/m³ were present in the air (Ref. 41). CN's in the water were reported as low but detectable (Ref. 41). In addition, EPA has estimated airborne release factors for other processes involving the direct chlorination of hydrocarbons that range from 0.03 g/kg (monochlorobenzene) to 2.57 g/kg (carbon tetrachloride) (Ref. 43).

EPA acknowledges that some CN isomers are subject to Occupational Safety and Health Administration (OSHA) limits. However, these limits were established to provide protection from acute effects of CN's and may not provide adequate protection against potential chronic hazards. Although it is possible that CN's will be manufactured in a system that limits worker exposure, the possibility exists that such a system will not be used and that adequate measures will not be taken to protect workers. Because domestic manufacture

could result in significant exposures and releases, the Agency believes that it should have the opportunity to review the manner and method of manufacturing CN's before domestic manufacture occurs.

EPA recognizes that CN's were manufactured domestically in the past, but believes that this definition of significant new use is a proper application of its SNUR authority. EPA believes that if the domestic manufacture of a substance has ceased, the resumption of manufacture can be considered a new use, and in certain cases, a significant new use subject to section 5 reporting. TSCA takes a similar position for premanufacture notification: chemical substances that were manufactured or processed in the past but that were not in commercial production when the TSCA Inventory was compiled are subject to premanufacture notification requirements before domestic manufacture. Of course, EPA recognizes that the cessation of manufacture is distinguishable from a temporary suspension of production due to short-term market conditions. In this case EPA believes that the domestic manufacture of CN's has ceased rather than been temporarily suspended.

3. Rationale for Defining Import by any Person of More Than 100,000 Pounds a Calendar Year as a Significant New Use. This proposed definition would require reporting prior to importing more than 100,000 pounds of any CN or combination of CN's during a calendar year. This figure would include the amount of CN's contained in an imported mixture.

As stated above, domestic manufacture of CN's ceased in 1980, only 32,487 pounds were imported in 1980, and only 34,062 pounds were imported in 1981. The only current importer of CN's has reported to EPA that it does not expect the import volume of CN's to increase. EPA believes that a near tripling of the current level of importation (an increase in imports of almost 70,000 pounds) would indicate a major expansion of current end uses, a revival of former end uses, or the development of new end uses for CN's. This would be significant because it would increase the opportunity for exposure and release of CN's. The submission of a SNUR notice before importation of more than 100,000 pounds of CN's a calendar year would alert the Agency to increased exposures and releases from current end uses, the resumption of past end uses, or the initiation of new end uses.

EPA is proposing that the 100,000 pounds per year notice requirement be applied on a per-person basis. That is, more than one person could import up to 100,000 pounds of CN's during a calendar year without submitting a SNUR notice. This means that more than 100,000 pounds could be imported yearly if there were multiple importers. To address this possibility, EPA also considered defining as a significant new use an aggregate 100,000 pound import figure and requiring a notice 90 days before the import totaled 100,000 pounds a year. To implement such a notice requirement either EPA or potential notice submitters as a group would have to keep track of the amount of CN's imported or proposed to be imported by various parties during the year. This approach would have the advantage of allowing Agency review before the total amount of CN's imported reached a substantial level. However, such an approach would also require the person who intends to import the 100,001st pound of CN's to bear the expense of a SNUR notice even if that person imports only a relatively small amount of the substance. The Agency requests comments on the possible use of aggregate volume notice requirements. If comments indicate that the approach is workable, EPA may adopt it in a final rule.

To address the problem of multiple importers EPA also considered the alternative of defining the volume of import by any person that is a significant new use at a figure below 100,000 pounds (e.g., 50,000 pounds). Establishing a lower import volume as a significant new use would reduce the possibility that significant quantities of CN's would be imported without the submission of a significant new use notice. Such an approach may be appropriate if it is assumed that more than one person may import CN's. If increased uses of CN's can be expected to stimulate market demand to a sufficient degree to attract multiple importers, a lower import volume may be an appropriate definition of a significant new use. The Agency requests comments on the option of defining import of CN's at a volume below 100,000 pounds as a significant new use to address the issue of multiple importers.

Another way of dealing with the potential problem of multiple importers would be to define processing over 100,000 pounds a year of CN's by any person as a significant new use. Under this approach, if a person processed over 100,000 pounds of CN's purchased from a number of importers, the

processor would be required to submit a SNUR notice even if the importers were not required to do so. The Agency also requests comment on this approach.

4. *Alternative Definitions of Significant New Use.* EPA considered several alternatives to the significant new use definitions proposed here including: (1) Domestic manufacture which allowed CN exposures or releases over a specified limit; (2) domestic manufacture which produced CN's over a specified volume; (3) certain specified end uses not now occurring.

a. *Exposures or Releases Over Specified Limit.* First, EPA considered defining as a significant new use (1) domestic manufacture or processing which allowed greater than a defined amount of exposure or release or (2) domestic manufacture of processing without specified exposure or release controls. For example, the Agency could require reporting if domestic manufacture and processing permitted more than X mg/m³ airborne concentration in the workplace (using definitions similar in form to those used by OSHA) or release greater than X parts per million in an effluent stream. Alternatively, the Agency could specify general types of exposure controls for manufacturing and processing CN's and any manufacture of processing of CN's without these controls would be considered a significant new use. EPA does not have appropriate information to propose such definitions at this time but encourages submission of such information in comments.

b. *Domestic Manufacture Over Specified Volume.* Second, the Agency considered defining domestic manufacture over a certain volume as a significant new use. EPA does not believe that this alternative differs significantly from the one proposed in this rule because the Agency believes that domestic manufacture is likely to occur only if the demand for CN's is close to 100,000 pounds per year and that manufacture at this level or above could present significant increases in exposures and releases.

c. *Specified End Uses Not Now Occurring.* Third, EPA considered defining as a significant new use any specified end use that is not now occurring, but that could occur and present significant exposures and releases. For example, EPA could define use as an intermediate for textiles, use as a fire retardant, or use in engine and gear oil as a significant new use for specified CN's. In view of the serious health and environmental risks that may be posed by CN's, EPA does not believe that this approach would assure that the

Agency could review and control all exposures of CN's that may result in health or environmental risk. In particular, EPA may not be able to identify all potential uses of CN's that would be of concern.

The Agency requests comments on the proposed definitions of significant new use and the alternative approaches considered.

IV. Other Regulatory Options

EPA considered a number of regulatory alternatives for CN's before proposing a SNUR. These include rules under section 8(a), 8(d), and 6(b)(4).

EPA believes that a section 8(a) reporting rule for CN's would not obviate the need for a SNUR. Although some CN's were included in the section 8(a) reporting rule published in the *Federal Register* of June 22, 1982 (47 FR 26992), this is a one-time reporting rule which would not alert EPA to increased exposure of CN's in the future. The Agency could propose a section 8(a) "tracking" rule requiring periodic reporting of information on uses and exposure to CN's. However, under a section 8(a) rule, EPA may not receive notice of all potentially significant new exposures, since small businesses would be exempt from reporting. In addition, by promulgating a SNUR, EPA could issue a section 5(e) or 5(f) order in appropriate circumstances, while a section 8(a) rule would not permit the use of these authorities. Rather, EPA would have to obtain test data under section 4 and then, if necessary, regulate CN's under section 6. This approach could allow unnecessary risks to human health and the environment during the time needed for data development. EPA believes that the serious hazards that may be associated with CN's warrant the issuance of a significant new use rule rather than a section 8(a) reporting rule.

Under section 8(d), EPA has promulgated a rule to require manufacturers and processors to submit to EPA health and safety studies in their possession on certain substances, including CN's. See the *Federal Register* of September 2, 1982 (47 FR 38780). This rule will give EPA information on CN's relevant to its review of significant new use notices that may be submitted and will help the Agency to determine whether additional regulatory action is necessary. However, the section 8(d) reporting rule does not obviate the need for a significant new use rule. For example, section 8(d) reporting will not provide sufficient information for EPA to examine current, overall exposure to CN's. In addition, the section 8(d) rule is

a one-time reporting rule that would not provide EPA with health and safety studies conducted in the future.

EPA has decided not to include CN's on the section 5(b)(4) list at this time. The use of section 5(b)(4) is under Agency study at this time. The use of section 5(b)(4) is under Agency study and it is possible that CN's may be included on the list at a later time.

V. Persons Subject to SNUR Notice Requirements

Section 5(a)(1)(B) requires persons to notify EPA before a substance subject to a SNUR is manufactured or processed for a significant new use. Because of the definition of significant new use proposed in this SNUR EPA expects that it will receive SNUR notices only from potential manufacturers and potential and current importers of CN's.

VI. Uses That May Be Subject to SNUR Notices Requirements

EPA recognizes that when chemical substances proposed to be subject to this SNUR are added to the Inventory they may be manufactured or processed for "significant new uses" as defined in this proposal before promulgation of the rule. The statute and its legislative history do not make clear whether uses occurring after proposal but before promulgation are to be considered "new uses" subject to SNUR notification. However, EPA believes that the intent of section 5(a)(1)(B) can be best served by determining whether a use is "new" or "existing" as of the date when the SNUR is proposed. If EPA considered uses commenced during the proposal period to be "existing" rather than "new" uses, it would be almost impossible for the Agency to establish SNUR notice requirements since any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, under this statutory interpretation, if the substances are manufactured or processed between proposal and promulgation for proposed "significant new uses," the Agency will still consider such uses to be "new" if they are retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who commenced manufacture or processing for a "significant new use" during the proposal period. The Agency specifically requests comment on ways to minimize this disruption.

VII. Procedures for Informing Persons of the Existence of this Significant New Use Rule

The final rule will be published in the *Federal Register* and codified in the Code of Federal Regulations (CFR). While this will provide legal notice of the rule, EPA is exploring additional ways of informing persons of the existence of the rule. The Agency intends to publish information concerning final SNUR's in the TSCA Chemicals-in-Progress Bulletin, published by the Industry Assistance Office of EPA's Office of Toxic Substances. EPA may also use the TSCA Chemical Substance Inventory to inform persons of the existence of final SNUR's through footnotes indicating that the substances were subject to a SNUR. The footnote could also refer to an Inventory Appendix which would give a *Federal Register* or CFR citation of the SNUR. As a variation of this approach, the Agency is considering publishing a list of substances subject to SNUR's as an Inventory Appendix. EPA requests comment on these various ways of informing persons of SNUR notice requirements.

VIII. Required Information

EPA is not now proposing a special form for SNUR notices. Instead, EPA would encourage SNUR notice submitters to use the proposed premanufacture notice form published in the *Federal Register* of October 16, 1979 (44 FR 59764) or, when it is promulgated, the final premanufacture notice form. SNUR notices must comply with section 5 of TSCA. The Agency interpreted section 5 requirements in its Interim Policy for Premanufacture Notices published in the *Federal Register* of May 15, 1979 (44 FR 28564) and its Statement of Revised Interim Policy published in the *Federal Register* of November 7, 1980 (45 FR 74378).

In a final SNUR, EPA would urge SNUR notice submitters to provide detailed information on human exposure and environmental release that will result from the significant new use. In addition, EPA would urge persons to submit information on potential benefits of CN's, including information on risks posed by CN's compared to their substitutes.

IX. Test Data

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in his possession or control and to describe any other data known to or reasonably

ascertainable by him. However, in view of the serious health and environmental risks that may be posed by CN's EPA encourages possible SNUR notice submitters to develop data on their health and environmental effects before commencing a significant new use of CN's. As stated above, the Interagency Testing Committee recommended testing for carcinogenicity, mutagenicity, teratogenicity, other chronic effects, and environmental effects. The Agency has tentatively concluded that test data are needed to assess adequately the risk from carcinogenicity, teratogenicity, and reproductive effects. The Agency believes that bioaccumulation in fish, uptake in plants, and chronic toxicity to fish and invertebrates are inadequately characterized environmental effects of concern. Persons required to submit a SNUR notice must decide what data on health and environmental effects to develop. However, in view of the potential risks from the different or increased exposures associated with the proposed significant new uses of CN's, EPA strongly encourages any person who submits a notice under this SNUR to include data on the toxic effects of concern. If a SNUR notice is submitted for a use involving much exposure or environmental release without such test data, EPA may take action under section 5(e).

As part of an optional prenotice consultation, EPA will discuss the test data which will be useful to the Agency's evaluation of a significant new use of CN's. EPA encourages persons to consult with the Agency before selecting a protocol for testing of CN's.

EPA generally encourages potential notice submitters who test the substances to review test methodologies published by the Organization for Economic Cooperation and Development or EPA test guidelines under section 4 of TSCA or section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act. Other test methods generally accepted in practice among professionals in the particular scientific field may also be appropriate.

X. EPA Review of Notice

EPA generally intends to review SNUR notices the same way it reviews premanufacture notices. EPA will publish a summary of each notice in the *Federal Register* under section 5(d)(2). The review period for the notice will run 90 days from EPA's receipt of the notice. Under section 5(c) this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substances for a significant new use

until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for CN's without information sufficient to judge the toxicity or exposure potential of the substance, EPA may issue a section 5(e) order limiting or prohibiting the new use until sufficient information is developed. In addition, section 5(f) authorizes EPA to prohibit a significant new use that presents or will present an unreasonable risk to health or the environment. EPA may also refer information in a notice to other EPA offices and other Federal information in a notice to other EPA offices and other Federal agencies, if they would be helpful in evaluating or controlling a chemical substance. If EPA does not take action under section 5, 6, or 7 to control a substance on which it has received a significant new use notice, section 5(g) requires the Agency to explain in the *Federal Register* its reasons for not taking action.

XI. Modification of Reporting Requirements

EPA is not proposing a sunset provision that would terminate these significant new use reporting requirements on a certain date. However, the Agency believes that there may be circumstances that will lead to modification of the proposed requirements.

When a significant new use notice is submitted, EPA will review the use to determine whether any regulatory action is necessary. If after review, EPA allows the use to occur, the use arguably should not be subject to further reporting. EPA will amend the SNUR to eliminate notice requirements for the use if the Agency decides that further notice of that use under a SNUR is not warranted. EPA may also amend the SNUR to eliminate notice requirements for other uses if it determines, based on new data, that the substances no longer present health or environmental concerns for those uses.

EPA will amend a SNUR only through a rulemaking. When EPA revises a SNUR by eliminating notice requirements for a single, narrow use of the substance, the Agency may dispense with notice and comment if it for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest. However, EPA will completely revoke or substantially alter a SNUR only after notice and an opportunity for comment.

XII. Proposed Rule Language

This proposed rule is structured as follows. The chemicals and defined significant new use are described in paragraph (a) of this rule. In paragraph (b), EPA proposes definitions applicable for the section, most of which have been used in other TSCA rules. Paragraph (c) describes the persons who must report. In this proposal, EPA also makes clear that the "principal importer" in an import transaction must be the party that submits the SNUR notice. An explanation of the principal importer concept appeared in EPA's clarification of its proposed premanufacture notification requirements published in the *Federal Register* of September 23, 1980 (45 FR 63006). The notice requirements and procedures for reporting under this rule are stated in paragraph (d).

Paragraph (e) clarifies that the exemptions of TSCA section 5(h) apply in SNUR's with the exception of the section 5(h)(4) exemption provisions which apply only to new chemical substances. Thus, substances can be manufactured in small quantities solely for research and development without a SNUR notice being submitted. In addition, EPA proposes that if the substances are produced as an impurity or byproduct, they are not subject to SNUR notice requirements. The Agency is adopting this policy for this proposal because identification of the presence of the substances when used in this way can be very difficult and because the Agency does not believe that these substances would give rise to significant exposures if they appear as an impurity or byproduct. Paragraph (f) describes enforcement provisions applicable to this rule.

EPA invites comments on all aspects of this proposed rule language.

XIII. Enforcement

It is unlawful for any person to fail or refuse to comply with any provision of section 5 or any rule promulgated under section 5. Manufacture or processing of chemical substances for a significant new use, as defined by rule, without submission of a SNUR notice, would be a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

1. Use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of a SNUR.

2. Fail or refuse to permit entry or inspection as required by section 11.

3. Fail or refuse to permit access to or copying of records, as required by TSCA.

Violators may be subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of a SNUR may be subject to penalties calculated as if they never filed their notices. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations of a SNUR could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA such as an injunction to restrain violations of a SNUR and seizure of chemical substances manufactured or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or who cause it to be reported.

XIV. Analyses and Assessments

A. Economic Analysis

Persons who intend to manufacture or import CN's for a significant new use, as defined in this rule would be required to submit a SNUR notice with the information required by statute. The cost of submitting a SNUR notice can be estimated from the cost of submitting a PMN, which has been estimated to range between \$1,200 and 7,900 per substance, with an average of \$4,550. The direct costs of submitting the required information may have less of an impact on a company's decision whether to produce or import CN's than the firm's uncertainty over what regulatory decisions EPA might make if a SNUR notice is submitted.

Issuance of a SNUR conveys the message that EPA has serious concerns about a chemical and that the Agency may consider further regulatory action if a SNUR notice is received. The uncertainty about possible regulatory follow-up may have a significant impact on a company's decision to produce or import the chemical.

A SNUR notice submitter may also incur the costs of subsequent regulatory action if, after reviewing the SNUR notice, EPA decides that the new use of the chemical may or does present an unreasonable risk to health or the environment. The agency could issue a section 5(e) order prohibiting or limiting the manufacture, processing, distribution, use, or disposal of the chemical's new use pending submission of additional information. The costs to industry of a section 5(e) order could range from \$891,100 to \$1,160,400, including research, analysis, and decision-making costs associated with evaluating the response to the section 5(e) order, and testing costs associated with complying with the order.

EPA estimates that the total cost to industry of a SNUR with a section 5(e) order and recommended testing, including costs of delays in production resulting from submission and review of the SNUR notice and delays due to testing, will range from \$896,400 to \$1,118,700. Assuming the producer or importer would pass all of the increased costs to the purchaser, the costs of EPA regulation would result in a price increase from 32 to 60 percent.

Section 12(b) of TSCA requires that a notice be submitted to EPA each year before a party exports a substance that is subject to a proposed or final SNUR. EPA estimates that the total cost of submitting a section 12(b) export notice ranges from \$50 to \$100 annually.

EPA also considered the economic impact of action under section 8(a). As an alternative to a SNUR, the Agency considered a section 8(a) rule to monitor uses of CN's. The cost of submitting a section 8(a) report would range from \$200 to \$700. In addition, the uncertainty about possible regulatory follow-up by EPA may have a significant impact on a company's decision to manufacture or import CN's.

A company submitting a section 8(a) report may also incur the costs of subsequent regulatory action, if after reviewing the report, EPA decides that the substance may or does present an unreasonable risk to health or the environment. The Agency could issue a section 4 rule requiring that certain testing be conducted on the substance. EPA estimates that the cost of a section 4 test rule could range from \$891,100 to \$1,160,400. There are no delay costs associated with a section 8(a) reporting rule or section 4 test rule. Total costs of reporting under section 8(a) including possible testing costs could range from \$891,300 to \$1,161,100.

EPA also considered designating CN's under section 5(b)(4) of TSCA. If done in conjunction with a section 8(a) rule, a

section 5(b)(4) designation would subject small businesses to reporting. If a section 5(b)(4) designation accompanies a SNUR, persons submitting a SNUR notice would be required to show that the significant new use of CN's will not present an unreasonable risk of injury to health or the environment. This requirement would tend to push the SNUR notice costs toward the higher end of the scale, or close to \$7,900.

The benefits of the regulatory alternatives have not been quantified; however, they have been qualitatively assessed. The benefits of a regulatory alternative are the reduction in risks to health and the environment as a result of Agency action. For CN's the benefits are primarily reduced rates of morbidity and mortality and reduced environmental burden.

The benefits of a SNUR are greater than the benefits of a section 8(a) reporting rule either with or without an associated section 5(b)(4) designation. A SNUR would prohibit production or importation of a chemical for the new use during the notice preparation and review period, thereby reducing risks to health and the environment. With a SNUR, there may also be immediate reduction in risks because any domestic production or import over 100,000 pounds may be prohibited under section 5(e) until test results are submitted and reviewed by the Agency.

Unlike a SNUR, a section 8(a) reporting rule, with or without an associated section 5(b)(4) designation, would not allow EPA to use section 5(e) authority to limit or prohibit the production or importation of CN's pending the development of data. Any reduction in risks would occur only through regulatory follow-up or by voluntary action taken by industry. Such action could take several years.

A more complete economic analysis of this SNUR is identified in the rulemaking record and is available for public review. EPA invites comments on this economic analysis.

B. Regulatory Assessment Requirements

1. *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 rule is not a "Major Rule" because it does not have an effect of \$100 million or more on the economy and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low.

If a company developed test data in response to a section 5(e) order following reporting under the SNUR, the total costs of EPA regulation could result in that company increasing its prices from 32 to 60 percent. However, because of the nature of the rule and the substances, EPA believes that there will be few significant new use notices submitted under this rule. In addition, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation which has high potential value. Further, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

2. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant impact on a substantial number of small entities. The Agency acknowledges that the current importer of CN's is a small business. EPA is unable to predict realistically whether other parties affected by this proposed rule will be small businesses. However, EPA believes that although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected would not be substantial even if all the potential new uses were developed by small companies.

3. *Paperwork Reduction Act.* The reporting provisions of this rule are not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, because this rule is not expected to impose reporting requirements on ten or more persons as defined in 44 U.S.C. 3502(4).

XV. References

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XVI Rulemaking Record

EPA has established an administrative record for this rule (docket number OPTS-50502). The complete record is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays in the OPTS Reading Room, Rm. E-107, 401 M St. SW., Washington, D.C.

The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency.

2. Federal Register notice entitled "Chlorinated Naphthalenes: Response to Interagency Testing Committee."

3. Economic Analysis of Proposed Significant New Use Rule on Chlorinated Naphthalenes.

4. Chlorinated Naphthalenes: Workplace Exposure and Release.

EPA will identify the complete rulemaking record by the date of promulgation. The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

(Sec. 5, Pub. L. 94-469, 90 Stat. 2012) (15 U.S.C. 2604).

Dated: April 22, 1983.

Lee L. Verstandig,
Acting Administrator.

PART 721—[AMENDED]

Therefore, it is proposed that Part 721 of Chapter I of Title 40 be amended by adding a new § 721.90 to read as follows:

§ 721.90 Chlorinated naphthalenes.

This section identifies activities with respect to certain chemical substances which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substances Control Act (TSCA). In addition, it specifies procedures for reporting on these chemicals.

(a) *Chemical substances and significant new uses subject to reporting.* Manufacture within the United States and import by any person or more than 100,000 pounds a calendar year are "significant new uses" of chlorinated naphthalenes.

(b) *Definitions.* The definitions in section 3 of TSCA, 15 U.S.C. 2602, apply to this section. In addition, the following definitions apply:

(1) The terms "article," "byproduct," "EPA," and "impurity," have the same meanings as in § 710.2 of this Chapter.

(2) "Chlorinated naphthalenes" means all individual monochloronaphthalene through octachloronaphthalene isomers and all mixtures of two or more such isomers that are listed on the TSCA Inventory of Chemical Substances in Commerce.

(3) "Importer" or "person who intends to import" means anyone who intends to import any chemical substance, in pure form or as part of a mixture or article, into the customs territory of the United States and includes:

(i) The person liable for the payment of any duties on the merchandise, or any authorized agent on his behalf (as defined in 19 CFR 1.11).

(ii) The consignee.

(iii) The importer of record.

(iv) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(v) 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.

(4)(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) The term "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 byproducts and coproducts that are separated from that other substance or mixture, and impurities that remain in that substance or mixture. Byproducts and impurities 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 produced for a commercial purpose.

(5) "Person" means any natural person, 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.

(6) "Principal importer" means the first importer who, knowing that a chemical substance will be imported rather than manufactured domestically, specifies the chemical substance and the amount to be imported. Only persons who are incorporated, licensed, or doing business in the United States may be principal importers.

(7) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(8) "Small quantities solely for research and development" means quantities of a chemical substance manufactured, imported, or processed

solely for research and development and that (i) are not greater than reasonably necessary for such purposes and (ii) are used by, or directly under the supervision of, a technically qualified individual.

(9) "Technically qualified individual" means a person or persons (i) who, because of education, training, or experience, or a combination of these factors, is capable of understanding the health and environmental risks associated with the chemical substance which is used under his or her supervision, (ii) who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research in order to minimize such risks, and (iii) who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting the research and development activity.

(c) *Persons who must report.* Any person who intends to manufacture, import (other than as part of an article), or process the substances listed in paragraph (a) of this section for the significant new use defined in that paragraph must submit a notice to the EPA Office of Toxic Substances in Washington, D.C. under the provisions of section 5(a)(1)(B) of TSCA and this section. Any notice of import must be submitted by the principal importer.

(d) *Notice requirements and procedures.* Each person who is required to submit a significant new use notice under this section must submit the notice at least 90 calendar days before commencing a significant new use. The submitter must comply with any applicable requirement of section 5(b) of TSCA, and the notice must include the information and test data specified in section 5(d)(1).

(e) *Exemptions and exclusions.* The chemical substances listed in this section are not subject to the notification requirements of this section if they:

(1) Meet any of the applicable exemption requirements of TSCA section 5(h), including the exemptions of subsection 5(h)(1) for test marketing substances and subsection 5(h)(3) for substances manufactured only in small quantities solely for research and development.

(2) Are manufactured or processed only as an impurity or byproduct.

(f) *Enforcement.* (1) Failure to comply with any provision of this part is a violation of TSCA section 15 (15 U.S.C. 2614).

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of a Significant New Use Rule is a violation of section 15 of TSCA (15 U.S.C. 2614).

(3) Failure or refusal to permit access to or copying of records, as required by TSCA, is a violation of TSCA section 15 (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection as required by TSCA section 11, is a violation of section 15 of TSCA (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties in TSCA section 16 (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirement of any provision of a Significant New Rule may be subject to

penalties calculated as if they never filed their notices.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of a Significant New Use Rule or act to seize any chemical substance manufactured or processed in violation of a Significant New Use Rule or take other actions under the authority of TSCA section 7 or 17 (15 U.S.C. 2606 or 2616).

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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, 1978.) 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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DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
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DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

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.

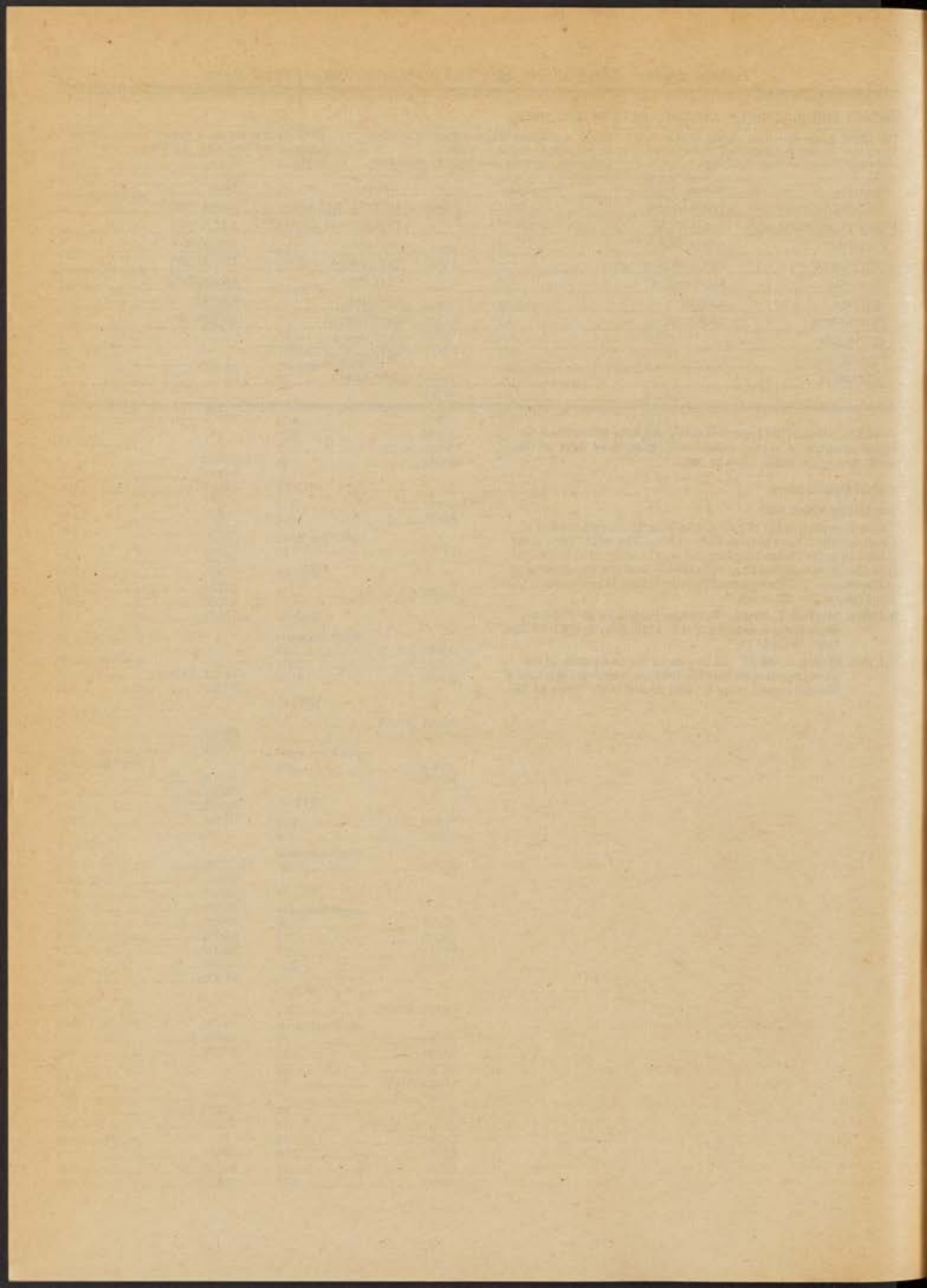
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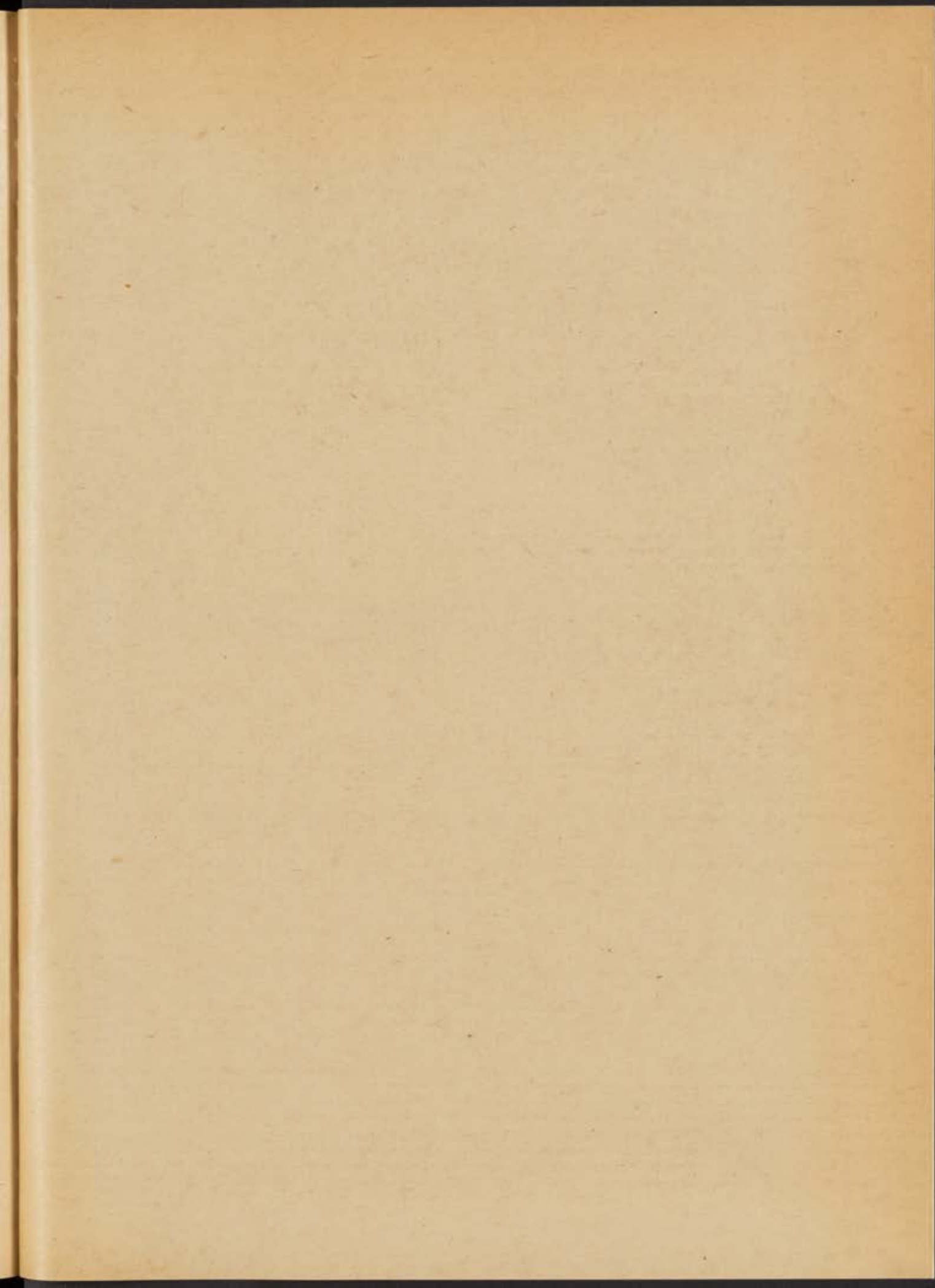
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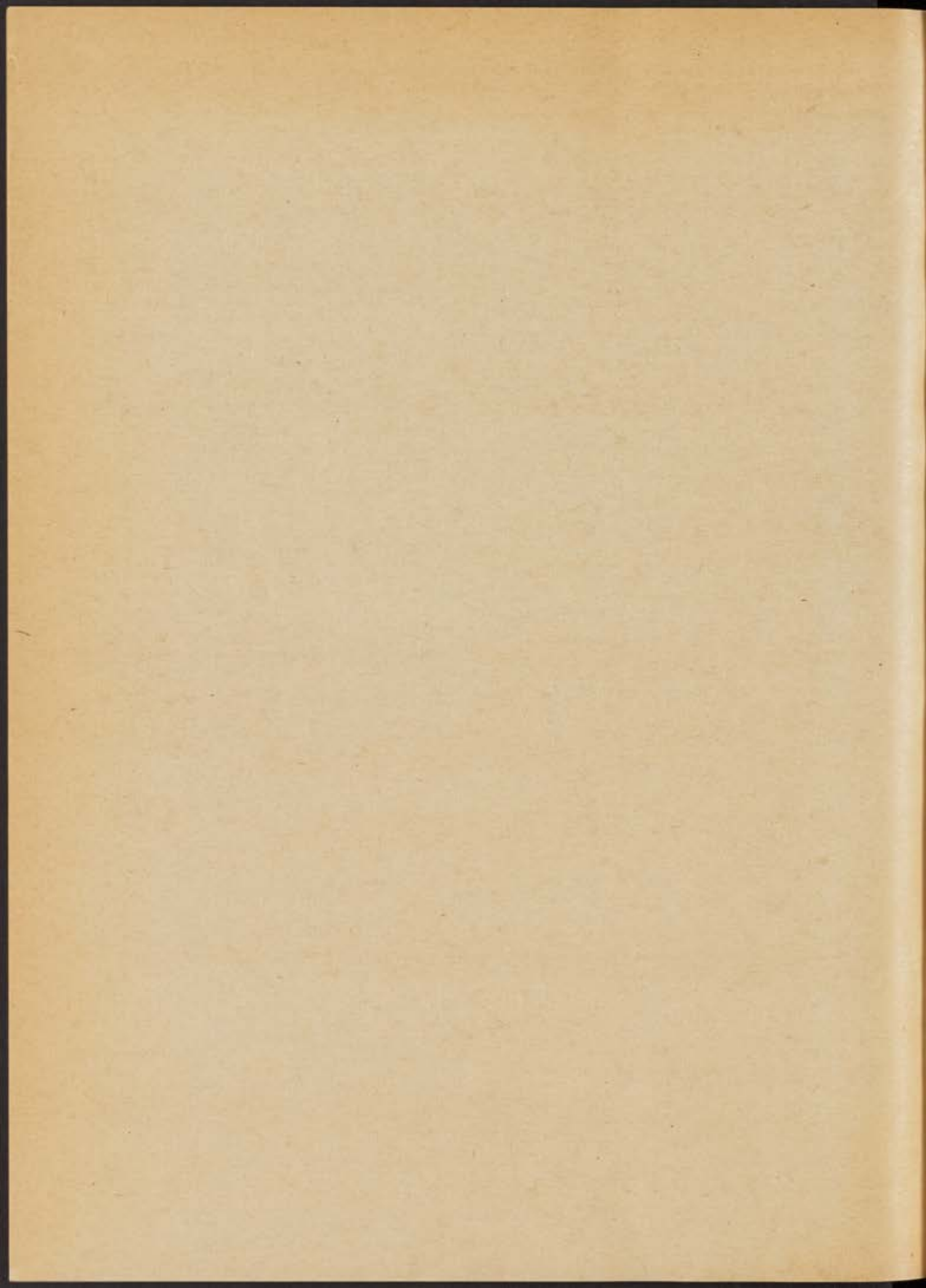
This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.J. Res. 245/Pub. L. 98-26 To correct Public Law 98-8 due to errors in the enrollment of H.R. 1718. (May 4, 1983; 97 Stat. 186) Price \$1.75

S.J. Res. 62/Pub. L. 98-27 To provide for the designation of the week beginning on May 15, 1983, as "National Parkinson's Disease Week". (May 4, 1983; 97 Stat. 187) Price \$1.75







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Administration of Ronald Reagan

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Monday, November 22, 1981
Volume 15—Number 47
Pages 1287-1290

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